(16,826.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 263.

THE LOUISVILLE TRUST COMPANY, PETITIONER,

vs.

THE LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

INDEX.

	Original.	Print.
Transcript from the circuit court of the United States for the district of Indiana	1	1
Caption	1	1
Bill of complaint of John T. Mills, Jr	2	2
Order appointing receiver, &c	10	10
Supplement to order appointing receiver	13	13
Order filing and approving bond of receiver	13	13
Petition of receiver for authority to pay note of Ohio Falls Car Co	14	14
Order granting petition to pay note	15	15
Application of receiver for leave in his discretion to allow and pay certain claims	15	15
Order granting application for leave to pay certain claims	17	17
Application of receiver for leave to pay certain claims growing out of contracts for construction of stone quarry tracks, &c	18	18
Order granting leave to pay certain claims	19	19

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 6, 1898.

	Original.	Print.
Bill of complaint of Central Trust Co. of N. Y. and John H. Stotsenburg	20	20
Exhibit A—Mortgage from L., N. A. & C. R'y Co. to Central Trust Co. and John H. Stotsenburg, May 1, 1890	32	32
Appearance for defendants	58	58
Bill of complaint of the Farmers' Loan and Trust Co. and John H. Barker	58	58
Exhibit A—Mortgage from L., N. A. & C. R'y Co. to the Farmers' Loan and Trust Co. and John H. Barker, January 1, 1886	69	69
B—Agreement between L., N. A. & C. R'y Co. and the Farmers' Loan and Trust Co. and John H. Barker, May 18, 1886	91	91
Appearance for defendants	96	96
Orders consolidating causes	97	97
Order extending appointment of receiver to consolidated causes, &c	97	98
Order granting petition of receiver for construction of new bridges, &c	99	99
Petition of receiver for construction of new bridges, &c	100	100
Appearance for Central Trust Co.	107	107
Bill of complaint of Central Trust Co. and James Murdock	107	107
Exhibit A—Mortgage from L., N. A. & C. R'y Co. to the Central Trust Co. and James Murdock, September 1, 1894	120	120
Order consolidating with consolidated causes	145	145
Order filing amended and supplemental bill	146	146
Amended and supplemental bill of the Farmers' Loan and Trust Co. and John H. Barker	146	146
Exhibit A—Mortgage from Orleans, West Baden and French Lick Springs R'y Co. to Farmers' Loan and Trust Co. and John H. Barker, December 12, 1896	149	149
B—Mortgage from Bedford and Bloomfield R. R. Co. to Farmers' Loan and Trust Co. and John H. Barker, December 12, 1896	153	153
Petition of receiver to pay interest coupons	158	158
Order to pay interest coupons	159	159
Order making new defendants, &c	160	160
Petition of receiver to institute condemnation proceedings	161	161
Order to institute condemnation proceedings	162	162
Answer of L., N. A. & C. R'y Co. *et al.*	163	163
Answer of Central Trust Co. *et al.*	166	166
Order filing intervening petitions, &c.	166	166
Intervening petition of Louisville Trust Co., filed Jan. 23, 1897	168	166
Decree, January 23, 1897	169	168
Intervening petition of Louisville Trust Co., filed Feb. 27, 1897	189	189
Order refusing to vacate decree of foreclosure and sale, &c	198	198
Special master's report of sale	199	199
Order confirming sale	201	201
Petition of Louisville Trust Co. for appeal	203	203
Assignment of errors	204	204

	Original.	Print.
Order allowing appeal	205	205
Bond on appeal	206	206
Citation	207	207
Clerk's certificate	208	208
Appearance for the Farmers' Loan and Trust Co	209	209
Appearance for John T. Mills, Jr.	210	210
Order setting cause for hearing	211	210
Appearance for appellees	212	211
Motion to dismiss	213	211
Order taking motion under advisement	217	215
Order re-setting cause for hearing	219	215
Order assigning Judge Bunn as a member of the court	219	216
Order taking cause under advisement	219	216
Opinion	221	217
Decree	229	223
Clerk's certificate	230	224
Writ of certiorari	231	225
Return to writ of certiorari	233	225
Stipulation as to return to writ of certiorari	234	226

IN THE

CIRCUIT COURT OF THE UNITED STATES

FOR THE DISTRICT OF INDIANA.

THE FARMERS' LOAN AND TRUST COMPANY,
No. 9,401. *v.*
THE LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, ET AL.

INTERVENING PETITION OF LOUISVILLE TRUST COMPANY.

1 Pleas of the Circuit Court of the United States within and for the District of Indiana, begun and holden at the United States Court House in the City of Indianapolis in said district on the first Tuesday of November, in the year of our Lord One Thousand Eight Hundred and Ninety-seven, before the Honorable William A. Woods, Judge of the Circuit Court of the United States, for the District of Indiana.

The Farmers Loan and Trust Company and John H. Barker, vs. The Louisville, New Albany and Chicago Railway Company, The Central Trust Company of New York; John H. Stotsenburg and James Murdock.	No. 9401. Chancery.

Be it remembered that heretofore, to-wit: at the May Term of said court, on the 24th day of August, 1896, before the Honorable William A. Woods, Judge of said court, the following proceedings in the above entitled cause were had, to-wit:

Comes now the complainant by Henry Crawford and William R. Crawford, his solicitors, and files his Bill of Complaint herein, in the words following, to-wit:

To the Honorable Judges of said Court sitting in Equity.

John T. Mills, Jr., a citizen of the State of New York, exhibits this bill of complaint against the Louisville, New Albany and Chicago Railway Company, a corporation organized and existing under the laws of the State of Indiana, and thereupon shows to the court as follows:

2 1. The said defendant, the Louisville, New Albany & Chicago Railway Company, is a corporation duly incorporated and existing under the laws of the State of Indiana with corporate capacity to own and operate a particular line of railroad in said State and also to acquire, lease and operate additional lines of railroad in that and other States.

2. As thereto authorized by the Statutes of Indiana, and its articles of incorporation, it owns the following lines of railway in Indiana, viz.: a main line extending from the city of New Albany to Michigan City, being 289 miles long, and a division extending from the city of Indianapolis to the western boundary line of the State of Indiana at Hammond, being 162 miles long.

It also leases or has trackage rights over the Chicago & Western Indiana Railroad from said last named city of Hammond to and into the city of Chicago, Illinois, and over the Pittsburg, Cincinnati & St. Louis Railway and the tracks of the Louisville Bridge Company and the Louisville & Nashville Railroad from the city of New Albany to and into the city of Louisville, Kentucky.

It is thus enabled to and does operate through and continuous trains from Louisville, Kentucky, and Indianapolis, Indiana, to and into the city of Chicago and also Michigan City, and it has also acquired the ownership or leasehold interest of valuable passenger and freight stations, tracks and terminal facilities in the cities of Chicago and Indianapolis.

Such defendant corporation also owns the entire stock of the Bedford & Blomfield Company, extending from Bedford to Switz City, 41 miles, and of the Orleans, West Baden and French Lick Railroad Company, extending from Orleans to French Lick,
3 about 18 miles.

The system of railroad thus owned, operated and controlled, embraces 537 miles of main line and over 130 miles of sidings over and upon which the defendant has for many years operated trains for the transportation of passengers, freight, express matter and United States mails and performing all the duties of a pubilc carrier of domestic and interstate commerce. Bill of Complaint of J. T. Mills, Jr.

3. Besides owning a large amount of engines, cars, machinery, tools and supplies which the defendant uses in operating its system of railroads, it owns the entire capital stock of its two branch roads and $1,000,000 of the capital stock of the Chicago & Western Indiana Railroad Company and $240,000 of the capital stock of the Chicago Belt Railroad Company, but all such four classes of stock have heretofore been pledged by the said defendant railway company as a security for certain issues of its mortgage.

4. The capital stock of the defendant corporation is $16,000,000....., of which $7,000,000. .... is preferred in the payment of any dividends.

Its outstanding fund debt is in five classes.

(1) $3,000,000. six per cent. bonds secured by a first mortgage upon the main road between New Albany and Michigan City, 288 miles, together with the equipment, appurtenances and franchises thereto belonging.

(2) $4,700,000. six per cent. consolidated bonds secured by a mortgage upon the entire railroad owned and controlled and the equipment, appurtenances and franchises thereto belonging and all the corporate stocks belonging to said mortgagor and
4 heretofore specified.

(4) $2,800,000. five per cent general mortgage bonds secured by a lien upon the entire railroad, equipment, appurtenances, franchises and stocks.

(5) $1,000,000. five per cent. equipment bonds secured by a first mortgage upon and title to a large amount of equipment particularly described in such mortgage and also by junior lien upon the entire railroad equipment, appurtenances, franchises and stocks aforesaid.

5. The fixed charges for interest and sinking fund upon the debt of the defendant, rentals and taxes amounts to about $1,200,000 per annum, involving a monthly charge of about $100,000.

6. Relying upon the expectation of increased traffic and larger gross and net revenue therefrom, the defendant corporation has during the last two years made large expenditures in improving its road and enlarging its facilities, by erecting extensive machine and repair shops at Lafayette, new and independant freight yards, tracks and building at Indianapolis, laying new and heavier steel rails in its main track, increasing side tracks and renewing bridges on its main line, changing the railroad from Bedford to Switz City to standard guage and purchasing additional machinery, tools and equipment.

A large part of the cost of such improvements and additions were paid for with money borrowed upon the credit of said defendant, and it now owes a floating debt created for that and other necessary corporate purposes of nearly $1,000,000. all which is now outstanding and unpaid and represented by the notes and other obligations of said defendant held by complainant and other bona fide creditors.

7. On August 24th, 1896, the complainant, by the consideration of this court, duly recovered a judgment against the said defendant railway company for the sum of $494,911.35 and costs of suit upon divers notes executed to complainant by the said corporation for borrowed money, which judgment is in full force unpaid.

An execution has been sued out upon such judgment directed to the marshal of this district and by him returned unsatisfied and no property found subject to levy.

8. In 1889 and 1890 the then board of directors of the defendant corporation without any authority from the stock holders of such company and contrary to law and without any valid or valuable consideration therefor placed upon each of the $1,185,000. six per cent. first mortgage bonds issued by a corporation of Kentucky called the Richmond, Nicholasville, Irvine & Beattyville Railroad Company an endorsement singed by the defendant corporation whereby it obligated itself "for value received" to guarantee to the holder of such bond the payment of the principal and interest of such bond according to its terms.

After such guarantee of payment was, contrary to law and without any real consideration, placed upon such $1,185,000. bonds, such securities were delivered to the parties interested in the construction of such Kentucky railroad and were sold and hypothecated to divers holders.

6 Such Kentucky railroad has never been completed, no interest on the guaranteed bonds has ever been paid, and such coupons in default amount to over 42 per cent., and the holders of such bonds assert that the principal of the bonds, according to the conditions thereof, have become due by reason of the default in interest payment.

The said Beattyville railroad is hopelessly insolvent, it has been decreed to be sold for the payment of a large amount of construction debts as first liens, which aggregate a sum exceeding the real or saleable value of the incomplete road and in effect render the bonds worthless so far as the primary mortgage security therefor is concerned.

As soon as the stockholders of the defendant corporation were informed of the action of their directors in placing such guarantee upon the said Beattyville bonds they in March, 1890, adopted resolutions at a regular stockholder's meeting repudiating the action of the directors and directed legal proceedings to be at once instituted to obtain a cancellation of all such unauthorized guarantees.

In April, 1890, suit was brought by such defendant corporation in the Circuit Court of the United States for the District of Kentucky against divers parties to have such bond guarantees declared to be void, and such court, in 1894, rendered a final decree sustaining such contention and adjudged that such guarantees were illegal and void and ordered the same to be cancelled and forever enjoined the holders thereof who were parties to such suit from instituting any suit against the defendant corporation herein upon or by reason of such guaranty.

7 From such decree of cancellation the holders of such guaranteed bonds as were parties prosecuted an appeal to the United States Circuit Court of Appeals for the Sixth Circuit, and the latter court has recently reversed such decree of cancellation and ruled and decided that the defendant corporation is liable on such guaranty to all persons who obtained such bonds for value and without notice that the majority of its stockholders had not peti-

tioned for or authorized the guaranty. Such court of appeals further held and decided that upon the evidence all of the bonds covered by the decree except a small number were acquired in good faith and without such notice and and that the defendant corporation was therefore liable upon such guarantee.

As complainant is advised persons and corporations holding over $500,000 of such guaranteed bonds who were not citizens of Kentucky or within the jurisdiction of said United States Circuit Court for the District of Kentucky, and who were not parties to the suit in such court do now claim and assert that by reason of such decision and reversal by the United States Circuit Court of Appeals the defendant's guarantees upon the Beattyville bonds in their hands have been adjudged valid and enforcible for the full principal and interest thereof.

9. Complainant is advised by the officers of the defendant corporation that the total amount of claims now asserted against it by reason of such bond guarantees will probably exceed $1,200,000. That the holders are numerous, scattered and some of them unknown. That already suits in attachments have been instituted against it in the State Courts of Kentucky by some of the holders
8 of such guaranteed bonds and the earnings and traffic balances of the defendant's railroad have been seized in garnishment and that such creditors and others in like situation threaten to institute other legal proceedings in Kentucky and Illinois and levy upon, seize and attach not only the current earnings of the railroad, but also the engines, cars and trains thereof when found in such last named States, and complainant verily believes that many such attachment suits will be presently instituted and seizure of equipment made by divers persons holding such guaranteed bonds.

10. Complainant further shows that the defendant has no property except its railroad, equipment, and appurtenances and the corporate stock heretofore specified, and that all such property is described in and covered by one or more of the five mortgages hereinbefore set out and that it has no resources to pay its unsecured debt except such surplus income from its road operations as may remain after discharging the interest upon mortgage bonds.

The corporate officers report that the current earnings of the road in consequence of a short wheat crop and lessened traffic are about $60,000 a month less than for the corresponding period of last year, and that such decline in earnings is likely to continue for

some months and that it will be impracticable to realize from such earnings after payment of operating expenses, taxes and rentals a sum sufficient to pay the next shortly maturing coupons upon the $3,800,000 general and equipment mortgage bonds and that both such liens will be defaulted upon at the next interest day.

The decision rendered within the last month holding the de-
9 fendant liable for over a million dollars by reason of such bond guarantees, has in this period of exceptional shrinkage in traffic absolutely destroyed the credit of the defendant corporation so that it cannot either pay or renew its bank obligations or fund the same and the said corporation is in fact insolvent.

11. Complainant charges that the owned and operated lines of railroad of the said defendant corporation lie in three different States and are subject to the jurisdiction of the courts in each of the counties in the said three states in which any part of the property is situated; that it owns a large amount of rolling stock materials and supplies necessary for the operation of the line, and that the unity of the property and its integrity as a whole as now held and operated as a railway line connecting important cities in the three different states and engaged in domestic and interstate commerce constitutes an important element of its value, and that to permit its severance or the continuous disturbance of its operations will result in ruinous sacrifice to every creditor of said corporation and disable it from performing its duties as a public carrier. That the complainant verily believes that unless this court in view of the present condition of the affairs of said insolvent corporation and the divers threatened litigations, attachments and seizures and the impending and inevitable default soon to occur on the two mortgage liens aforesaid, will deal with the property as a single trust fund and take it into its judicial custody for the protection of every interest therein that divers individual creditors of the defendant
10 will proceed to assert their remedies in the different courts in the several states where the property is situated, that levys and attachments will be laid upon the engines and cars of the company and the fuel, material and supplies which are indispensable to the continuous operation of the railroad will be seized, which will greatly interfere with and ultimately prevent the company from a proper discharge of its duties as a carrier and seriously diminish the earnings of the road; that considerable and unnecessary multiplicity of suits will result; that judgments and priorities will be attempted and the trust property, valuable mainly in consequence of its unity, will be dismembered by the con-

Com- of John lls, Jr.

flicting decrees and judgments of the many courts exercising such separate jurisdictions at the suit of individual creditors.

Inasmuch, therefore, as the complainant has no adequate remedy at law for the greivances hereinbefore stated and can only have relief in equity, he files this bill of complaint in behalf of himself and all, others in like relation to the said property, and prays that due process of law issue against the defendant, the Louisville, New Albany & Chicago Railway Company, and that it be summoned to appear in this court and answer this bill, but without oath, all answers under oath being hereby expressly waived under the rules to stand to and abide by such orders and decrees as the judges of this court may from time to time enter in the premises; that for the purpose of enforcing the rights of complainant and all other creditors of said insolvent corporation according to their due equities and priorities and to preserve the unity of the said railway system as it has been and now is maintained and operated and to prevent the disruption thereof by the separate
11 attachments, executions or levys, this court will forthwith appoint a receiver for the entire railroad, property, choses in action and assets of every description wherever situated belonging to the said defendant corporation with authority to manage and operate the same as the officer of and under the protection of this court with the usual powers of a receiver in such cases, and that all of the officers, managers, superintendents and employees of the said railway company shall be ordered and required forthwith to deliver up possession of all and singular every part of the said property of said insolvent corporation over which the said receiver is thus appointed, and shall also deliver over all books of account, offices, vouchers and papers in any way relating to the present business or operation of said system of railway and shall be restrained form interfering in any way whatever with the possession and control of the receiver over any part of the said property so to be delivered to him. That the court will fully administer the trust fund in which the complainant is interested as a judgment creditor and will for such purpose marshall all the assets of said insolvent corporation and ascertain the several liens and priorities existing upon the said system of railways or any part thereof and the amount due upon each and every of such liens whether by mortgage or otherwise, and enforce and decree the rights, liens and equities of each and all of the creditors of the said Louisville, New Albany & Chicago Railway Company as the same may be finally ascertained and decreed by the court upon the respective claims and interventions of several of such creditors or lienors in

and to not only the said line of railroad, appurtenances and
12 equipment or any part of them, but also to and upon each and
every portion of the assets and property of the said insolvent corporation, and that said railroad and all the assets of such corporation shall be sold by proper decree of the court, and the proceeds divided among the different creditors according as their liens and priorities may be decreed by the court, and for such other and further relief as to the court may seem proper and as may be necessary to further enforce the rights and equities of the complainant and all other creditors of such corporation.

JOHN T. MILLS, JR.
Complainant.

HENRY CRAWFORD,
WILLIAM R. CRAWFORD,
Solicitors.

UNITED STATES OF AMERICA,
DISTRICT OF INDIANA. } ss.

Henry Crawford on oath says he is solicitor and agent of the complainant, John T. Mills, Jr., of New York, who is now absent from this district.

Affiant has read the above bill of complaint and states that the matters therein set forth are true as he verily believes.

HENRY CRAWFORD,

Subscribed and sworn to before me, this August 24th, 1896.

NOBLE C. BUTLER.
Clerk.

And at the same time, on said 24th day of August, 1896,
13 before the Honorable William A. Woods, Judge of said court, the following further proceedings in the above entitled cause were had to-wit:

tment of McDoel er.

Now on this August 24th, 1896, comes the complainant by Henry Crawford, his solicitor, and presents to the court his verified bill of complaint as judgment creditor of said railway company, and alleging its insolvency and praying for the appointment of a receiver of all the assets of such corporation and the general administration and liquidation of its affairs:

Comes also the defendant railway company by E. C. Field, its general solicitor, and enters its appearance to this action and files its answer admitting the material allegations of said bill to be true, and the complainant's motion for a receiver coming on to be heard, upon consideration of the matters set up in the said bill and admitted by the answer, the defendant appearing to such application for the sequestration of its property and interposing no objection thereto, it is ordered, and adjudged by the court that William H. McDoel, of Chicago, Illinois, be and he is hereby appointed receiver of all and singular the railroads, property, choses in action, moneys, books, papers, records and all other assets of such corporation wherever situate, as described in the Bill of Complaint herein, being the lines of railroad extending from Louisville, in the State of Kentucky, to Michigan City in the State of Indiana, and also the line extending from the city of Indianapolis to the city of Chicago, Illinois, and also the railroad extending from Bed-
14 ford, Indiana to Switz City in such State, and also the railroad extending from Orleans, Indiana, to French Lick, in such State, together with all the engines, cars, equipment, appurtenances, fuel, material, tools, and office furniture, and supplies, wherever situate, which belong to such corporation, including all leasehold estates or interests, trackage and traffic rights, and contracts with other roads, bridges or corporations, all its tracks, siding, terminal facilities, shops, offices, stations, tanks, rights of way, buildings of every kind, and any and all other property of every and any kind owned, held, leased or enjoyed by said defendant railway company at the date of the filing of this bill in connection with the operation of its system of railways in the States of Indiana, Illinois and Kentucky, and also all the moneys, choses in action, credits, uncollected earnings, bonds, stocks, contracts and rights thereunder, books, records, vouchers, papers and all other assets of every kind, real, personal or mixed, held or possessed by said defendant railway company.

The said receiver is hereby fully authorized and directed to

forthwith demand and take the immediate and exclusive possession of all and singular the within described system of railway, branches, leasehold interests, equipment, appurtenances, money, choses in action, and all other corporate assets wherever situate and wherever found and as the officer of this court to continue to operate the said system of railway in the same manner as at present conducted and in all respects perform and fully discharge the duties owed by the said railway company as a public carrier of passengers and freights, and receive, hold and disburse all the income, earnings derived from the operation of such railroad in such manner as 15 shall be directed by this court. Appointment W. H. McDoel Receiver.

Each and every of the directors, officers, agents and employees of the said Louisville, New Albany & Chicago Railway Company, are hereby ordered, directed and required forthwith upon the demand of the said receiver or his duly authorized agent to at once turn over and deliver to such receiver or such agent as he may authorize any and all the railroad, equipment, appurtenances, leaseholds, materials, supplies, moneys, choses in action, bonds, stocks and all other property, real, personal or mixed belonging to such defendant railway company, or in which it has any interest or possession, and also all books of account, vouchers, papers, contracts, deeds, records, bills, notes, accounts, or other property in their hands or under their control. And each and every of such directors, officers, agents and employees, are hereby enjoined and restrained from interfering in any way whatever with the possession, control or operation of such railroad company, corporate property, and assets or any part thereof, except as directed and authorized by the said receiver.

The said railway company, by its proper officers, and under its corporate seal is required forthwith to execute and deliver a proper assignment in writing vesting in such receiver all and singular the personal property, choses in action and earnings belonging to such company at the date of filing this bill.

The said receiver is hereby fully authorized to operate and manage the said railroad and all other corporate assets at his 16 discretion and in such manner as will fully discharge its public duties and produce the best financial results, and for such purpose he is vested with full discretionary power subject to the approval of the court to employ and discharge and fix the duties and compensation of all such officers, attorneys, agents, and employees, as may in his judgment be necessary or proper to enable him to satisfactorily conduct the operations of such railroad.

ntment of
McDoel
ver.

The said receiver is hereby fully authorized and empowered to institute all such suits as may in his judgment be necessary to collect the outstanding choses in action or assets of such railway company or to properly enforce and protect the property and trusts hereby vested in him.

He is further fully authorized to defend any and all actions instituted against him as such receiver and to also appear in and conduct the prosecution of all such suits brought by or against the said railway company, the prosecution or defense of which may be in the judgment of such receiver, necessary for the protection of the property or the interests and rights of creditors.

The said receiver is hereby fully authorized in his own name to demand, sue for, receive and receipt for all the uncollected earnings, traffic balances, accounts, notes, and choses in action of every kind belonging to such railway company at the date of filing this bill, all which are vested in such receiver. And he is also authorized to receive all the income and earnings to be derived from the operation of said railway after he takes possession under the order of this court.

17 Out of the funds from time to time coming into his hands, from the operation of said railroad, the said receiver shall pay the necessary current expenses of operating the said road, and executing the trusts hereby vested in him, including all taxes and assessments upon the said property, and shall also pay and discharge all unpaid payrolls and vouchers and claims for operating supplies, car mileage and traffic balances, which have accrued in the operation of the railroad at any time within six months prior to the entry of this order.

The receiver is hereby required to open proper books of account wherein shall be stated the earnings, expenses, receipts and disbursements of his trust, and he shall take and preserve vouchers for all payments made and file in this court monthly reports of his receipts and disbursements.

The said receiver is ordered within ten days to file with the clerk of this court a proper bond in the penal sum of one hundred thousand dollars, with surety to be approved by the court, conditioned for the proper discharge of his duties as such receiver, and to account and pay over all funds coming into his hands according to the orders of this court.

The said receiver or any party in interest has liberty to apply to the court at any time for such modification of this order as they may be advised.

Appointment W. H. McDoel Receiver.

And afterwards, to-wit: at the May term of said court, on the 27th day of August, 1896, before the Honorable William A. Woods, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

The court now of its own motion, by way of supplement to
18 the order of the appointment of the receiver herein, orders that as soon as practicable and within twenty days, the receiver file with the clerk of this court a statement of the liabilities of the Louisville, New Albany & Chicago Railway Company and of the assets of the company available for the payment of liabilities, showing what obligations are secured by mortgage or otherwise, what are entitled to equitable preference, and what are unsecured, the rate of interest on secured liabilities, when payable, whether default has been made in the payment of interest and whether after paying operating expenses, the interest can be paid on mortgage bonded indebtedness as it matures so as to prevent default, and if there is likely to be a deficiency of means, after paying operating expenses, to paying accruing interest on bonded debts, what as near as can be estimated, will be the amount of the deficiency, or, if a surplus is probable, of what amount.

And afterwards, to-wit: at the May term of said court, on the 1st day of September, 1896, before the Honorable William A. Woods, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now William H. McDoel, and files his bond as receiver herein in the sum of one hundred thousand dollars, with Samuel Thomas, Gilbert B. Shaw and James Murdock as sureties thereon, which bond is approved by the court.

And afterwards, to-wit: at the May term of said court, on the 12th day of September, 1896, before the Honorable William A. Woods, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

n for au-
to pay
f Ohio
Car Co.

Now on this 12th day of September, 1896, comes William
19 H. McDoel, receiver in the above entitled cause, by E. C. Field, his attorney, and presents his petition asking for authority to pay a certain note therein described out of the earnings, said petition is in the words following, to-wit:

Your petitioner, William H. McDoel, Receiver, appointed in the above entitled cause, comes and respectfully shows that on the 23rd day of April, 1896, the Louisville, New Albany & Chicago Railway Company entered into a contract with the Ohio Falls Car Manufacturing Company, for the purchase of one mail car, railroad number 83, owners plate number 26, for which said railway company executed its promissory note of said date, in the sum of $6,249.34, which becomes due and payable according to the terms thereof on the 23rd day of September, 1896, without grace; that said car was worth the amount of money agreed to be paid therefor and is valuable and necessary in the operation and conduct of the business of carrying the United States mails and will be to the advantage of the trust confided to this petitioner to retain the title and possession thereof; that by the terms of the agreement between said parties that in case of default in the payment thereof the said car company or its assigns shall have the right at its or their option to take immediate and exclusive possession of and remove said car, and is also vested with author-
20 ity to sell the same on notice at public or private sale and to apply the proceeds to the payment of said note, and in case of any deficit the railway company is made liable for the payment thereof on demand.

Wherefore, petitioner prays authority and direction of this Honorable Court to pay out of the earnings the said note according to the terms.

WM. H. MCDOEL.
Receiver.

E. C. FIELD.
Attorney for Receiver.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

William H. McDoel, being first duly sworn, deposes and says that he is the receiver mentioned in the foregoing petition; that he

has read the foregoing petition and that the statements therein are true and correct, as he verily believes. Petition for authority to pay note of Ohio Falls Car Co.

WM. H. MCDOEL.

Subscribed and sworn to before me, a notary public in and for said State and county, on this 11th day of September, 1896.

[SEAL] WM. S. KINMAN.
Notary Public.

And the court being advised in the premises:

21 It is ordered, adjudged and decreed that the receiver herein be authorized to pay out of the earnings the principal and interest of said note according to the terms thereof. Order on same

And afterwards, to-wit: at the May Term of said court on the 23rd day of September, 1896, before the Honorable John H. Baker, one of the Judges of said court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now William H. McDoel, Receiver herein and files his application for the allowance of certain claims for overcharges, &c., in the words following, to-wit:

Application of Receiver for leave in his discretion to allow and pay certain claims.

William H. McDoel, receiver appointed in the above entitled cause, respectfully represents to the court that prior to his appointment there were pending a large number of claims in behalf of shippers and connecting lines of railroad, growing out of overcharges, losses and damages in freight shipments; that is to say, where a car load of freight originated on the line of the receiver's road destined to a point beyond said line and over the line of another road and either an overcharge on such freight, loss thereof or damage thereto occurred, the same would be directly charged to the road on which said freight originated, but if all or any part of such claim were properly chargeable to the contracting line, the road receiving such freight would pay such claim and charge it up in the Application of Receiver for allowance of certain claims

ication of iver for wance of ain claims.

account with the connecting line against such other road, and the same would be the course of business and procedure with freight originating on the connecting line. In this way accounts
22 growing out of such claims would be carried by the respective roads for a long period of time; that such was the manner of doing business between your petitioner's road and connecting roads, for a long time prior to his appointment, covering in some instances a period of several years prior thereto; that the same manner of doing business was also true respecting shippers on your receiver's line of railroad and connecting lines, and that there is a large number of claims which were vouchered prior to the appointment of said receiver, and there is a number which should be vouchered, the most of which were approved within a year prior to the appointment of the receiver, and a few extending back for a period of two years; that the aggregate amount of said claims growing out of the overcharge, loss and damage, will not exceed approximately the sum of forty thousand dollars, and your receiver prays the court that he may be ordered to settle said accounts in his discretion, where the same are shown to be valid and just.

Said receiver further represents that in respect to the claims of connecting lines of railroad there has been a running account of charges made, one against the other, growing out of said business; for instance, one connecting road may have charged against your petitioner's road one thousand dollars on account of overcharge, loss and damage to freight, while your receiver's road may have a like amount charged on the same account against such connecting road; and it is important to successful railroad management that said claims should be adjusted and if anything is found due a connecting road that the amount thereof should be paid and if any amount is found due from the connecting road to your Re-
23 ceiver's road that the same should be collected; and your petitioner represents in respect to individual shippers that their claims growing out of overcharges, losses and damages were promptly filed for adjustment, and the delay in the allowance and payment of the same arose through no fault of said claimants, but the delay thereof was occasioned by the necessary investigation required to determine the validity and justness of said claims, and your petitioner represents that where said claims are found to be just that the same should be paid irrespective of whether the same arose within six months prior to the date of your receiver's appointment and that the settlement and payment thereof is to the interest of the business entrusted to said receiver, and that their payment is necessary to restrain and hold the patronage of the shippers of

said road; that if said claims which are determined to be just are not allowed and paid, great loss will be entailed in respect to the business of said company as conducted by your receiver. Application of Receiver for allowance of certain claims

Wherefore, said receiver prays this Honorable Court to direct order and vest him with discretionary power to settle and pay said claims of the character herein recited irrespective of the date of the same, and that said receiver be directed to pay the same, out of the funds in his possession or which may come into his possession out of the earnings of the road.

WM. H. MCDOEL,
Receiver.

UNITED STATES OF AMERICA,
STATE OF INDIANA,
MARION COUNTY. } ss.

William H. McDoel being by me first duly sworn on oath says,
24 that he has read the foregoing application and is cognizent of the facts therein stated and that said facts are true as he verily believes.

WM. H. MCDOEL.

Subscribed and sworn to before me this 23rd day of September, 1896.

NOBLE C. BUTLER,
Clerk.

And at the same time, on the 23 day of September, 1896, before the Honorable John H. Baker Judge of said court, the following further proceedings in the above entitled cause were had to-wit:

And now upon this 23 day of September, 1896, there was presented to me the application of William H. McDoel, receiver for the allowance and payment of certain claims on behalf of shippers and connecting railroads, for over charges, losses and damages in the shipment of freight prior to the appointment of the receiver in the above entitled cause; and it appearing to me that the said application is just and reasonable and that such claims as are found to be valid and just should be paid for the reason that it would be to the best interest of the property of the defendant and to the management of said property in the hands of the receiver. Order upon

pon same.

It is therefore considered, ordered and adjudged that the prayer of the said application be granted and that all claims for overcharges, losses and damages in the shipment of freight on be half of shippers and connecting lines of railroad, irrespective of the time or date when the same may have accrued prior to the appointment of the receiver in the above case be properly audited and vouchered by the proper accounting officers of the receiver
25 and when so audited shall be approved and paid by said receiver if in his judgment the same are just and valid claims for payment.

And afterwards, to-wit: at the May term of said court, on the 23 day of September, 1896, before the Honorable John H. Baker, one of the judges of said court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now the receiver and files his petition in the words following, to-wit:

tion of r for ce of claims.

Application of receiver for order to pay certain claims growing out of contracts for construction of Stone quarry tracks, etc.

William H. McDoel, Receiver appointed in the above entitled cause, represents to the court that along the line of said railroad there are a large number of stone quarries, grain elevators and other business enterprises, which now and for a long time past have offered a large volume of freight business to said above entitled defendant; that said stone quarries are approximately one mile distant from the main line of said railroad; that in order to afford facilities for the transportation of stone from said quarries it became necessary for said defendant to build tracks from its main line into said quarries; that in all cases written contracts were entered into between the owners of the quarries and the railroad company, by the terms of which the owners of the quarries obtained the title to the right of way and graded and bridged the road bed, ready for the ties and iron, and either vested the
26 title to the right of way directly in the railway company or agreed to convey the same upon the performance of the conditions therein named; that the owners of said quarries advanced the necessary amount of money for the ties and iron, material and labor for laying the track, to the railway company, with an agreement on the part of the railway company, with an agreement on

the part of the railway company to pay the said money back to said quarry owners by a rebate of from one to two dollars per carload of stone shipped from said quarries over the line of said railway company; that the same kind of contracts were made with the owners of elevators and other industries along said line, from which said railway company received large amounts of freight, but in nearly all cases the distance from the main line to such elevators and other enterprises was not to exceed 500 feet; that there is due and to become due and payable to parties of the above named classes approximately eighteen thousand dollars; that their business is important and profitable to the defendant and to all interested in said property, and your petitioner represents that their claims are in the nature of an equitable lien upon the property of said defendant company for the amount owing them under the terms of said contracts, and that he believes it is in the interest of the trust that said claims should be paid out of the earnings of the road; Application of Receiver for allowance of certain claims.

Wherefore your petitioner prays that the court order and direct the payment of said claims irrespective of whether or not the same accrued within six months prior to the date of his appointment as receiver.

WM. H. MCDOEL,
Receiver.

27 And it appearing to the court that the matters stated set forth in said petition are true and that there is due the owners of stone quarries, elevators and other industries on the line of the railway of defendant for rights of way and construction of tracks from the main line to them, under contracts between the owners thereof and the defendant, the sum of eighteen thousand dollars, more or less, which is payable in the way of rebates of one to two dollars per carload of freight shipped by said owners thereof over the railway of said defendant and that it is for the interest of the trust that the claims under and on account of said contracts should be paid in accordance with the terms thereof. It is thereupon owned by the court that the receiver allow and pay such claims and rebates as aforesaid out of the earnings of his receivership. Order on same.

And afterwards, to-wit: at the November term of said court, on the 12th day of November, 1896, before the Honorable William A. Woods, Judge of said court, the following further proceedings in cause No. 9,400 were had, to-wit:

Come now the complainants, by Butler, Notman, Joline & Mynderse, their solicitors, and file their bill of complaint herein, in the words following, to-wit:

28 COPY.

CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF INDIANA.

Central Trust Company of New York and John H. Stotsenburg, Complainants,
9,400. Versus
Louisville, New Albany & Chicago Railway Company and others, Defendants.

BILL OF COMPLAINT.

To the Honorable the Judges of the Circuit Court of the United States for the District of Indiana, Sitting in Equity:

of Com-
nt of Cent.
st Co. and
senburg.

Central Trust Company of New York, a corporation created and existing under the laws of the State of New York, and a resident and citizen of the State of New York, and John H. Stotsenburg, a resident and citizen of the State of Indiana, bring this their bill of complaint against the Louisville, New Albany & Chicago Railway Company, a corporation created and existing under the laws of the State of Indiana, and a resident and citizen of the State of Indiana, and an inhabitant of the District of Indiana, and against James Murdock, a citizen of the State of Indiana, residing in Lafayette in said State of Indiana and against the Farmers' Loan and Trust Company, a corporation created and existing under the laws of the State of New York, and a resident and citizen of the State of New York, and against John H. Barker, a citizen of the State of Indiana, residing in Michigan City, in said State of Indiana, and thereupon your orators complain and say:

Bill of Complaint of Trust Co Stotsenburg

29 I. On and prior to the first day of May, 1890, the Louisville, New Albany & Chicago Railway Company (hereinafter styled the New Albany Company) was and it is still a corporation duly created and existing under the laws of the State of Indiana, and was and is fully authorized to construct, equip, own, maintain and operate the lines of railway hereinafter mentioned, and to execute and deliver the bonds and mortgages hereinafter mentioned. The defendant James Murdock is a citizen of the State of Indiana, and resides in Lafayette, in said State of Indiana, and the defendant the Farmers' Loan and Trust Company is a corporation duly created, organized and existing under the laws of the State of New York, and a resident and citizen of said State of New York, and the defendant John H. Barker is a citizen of the State of Indiana, and resides in Michigan City, in said State of Indiana.

II. Your orator Central Trust Company of New York was at the times hereinafter mentioned, and now is, a corporation created and existing under the laws of the State of New York, and bearing the corporate name of the Central Trust Company of New York, and at all the times hereinafter mentioned it was and now is duly authorized and empowered under the terms of its charter to take and hold in trust the property transferred and conveyed to it in trust as hereinafter stated, and to execute and perform the trusts imposed upon it under and by virtue of the mortgages or deeds of trust hereinafter described. Your orator John H. Stotsenburg
30 is a citizen of the State of Indiana, and resides in New Albany, in said State of Indiana.

III. On or about the 1st day of July, 1880, the defendant New Albany Company made its certain mortgage, bearing date on that day, to John C. New, of Indianapolis, and Washington C. DePauw, of New Albany, in the State of Indiana, as trustees, to secure $3,000,000 of bonds bearing date July 1st, 1880, and payable July 1, 1910, with interest at the rate of six per cent. per annum, such bonds being called Main Line bonds, and said mortgage being a lien upon the main line from New Albany to Michigan City. On or about the 10th day of August, 1881, said New Albany Company made its certain mortgage to John C. New, of Indianapolis, as trustee, to secure $2,300,000 of bonds bearing date August 10, 1881, and payable August 1, 1911, with interest at the rate of six per cent. per annum, such bonds being called Air Line bonds, and said mortgage being a lien upon the Air Line from Indianapolis to the State line of Illinois. On or about the first day of January, 1886, said New Albany Company made its certain mortgage, bear-

Com- of Cent. Co. and nburg.

ing date on that day, to the Farmers' Loan and Trust Company, of New York, and John H. Barker, of Michigan City, as trustees, to secure an issue of bonds bearing date January 1, 1886, and payable April 1, 1916, with interest at the rate of six per cent. per annum, such bonds being called Consolidated bonds, and some thereof being now outstanding, and said mortgage covering the system of railroad of said New Albany Company.

IV. On or about the first day of May, 1890, the New Albany
31 Company, for the purpose of paying, funding, exchanging and retiring its mortgage bonds then outstanding, and for constructing and acquiring extensions and additional lines of railroad, and for increasing the equipment, shops, buildings, sidings, appurtenances and facilities, and improving the condition of its railroad, in the lawful exercise of its corporate powers, and due corporate action having first been had, resolved and determined to issue its series of bonds, to be designated General Mortgage Gold Bonds, bearing interest at the rate of five per cent. per annum, and payable in fifty years from May 1, 1890, to the amount of $25,000 per mile of main track of its then existing system and of addltional railroad actually owned by it, either in the State of Indiana or elsewhere, and to secure the payment of said bonds by a mortgage or deed of trust conveying all the railroad of the company then constructed and in operation, including all its branches, sidings, and leasehold rights, and also all railroads, extensions and branches which might be thereafter created, built, purchased or acquired by said company, whether by construction, purchase, consolidation or otherwise, and whether situate within or without the State of Indiana, together with all the equipment and appurtenances at any time belonging to said company, or in use on its lines of railway, wherever situate, and all and singular its property of every kind and nature, real, personal and mixed, then owned or at any time to be there-
32 after acquired, in possession or expectancy, including the corporate and other franchises of the company. In pursuance of said resolution and determination, and in the exercise of its lawful corporate powers, said New Albany Company did thereafter make and execute 2,800 bonds of said series, amounting to $2,800,000 of principal par value, by each of which bonds said New Albany Company, for value received, agreed to pay to the Central Trust Company of New York, or the bearer thereof, the sum of $1,000 in gold coin of the United States of the present standard of weight and fineness, at the office or agency of said New Albany Company in the City of New York, on the 1st day of May, in the year 1940, with interest thereon in the meantime at the rate of five per cent.

per annum, payable semi-annually in like gold coin on the 1st days of May and November in each year at the said New York office or agency, upon presentation of the coupons thereto annexed as they severally should become due.

V. On or about said 1st day of May, 1890, said New Albany Company, in pursuance of the resolution and determination above mentioned, and in the due exercise of its corporate powers, and due corporate action having first been had, in order to secure the payment of the principal and interest of the said bonds as the same should respectively become due and payable, according to the tenor and effect of the said bonds and the coupons or interest warrants accompanying the same, made, executed and delivered unto your orators a certain mortgage or deed of trust bearing date on the
33 said 1st day of May, 1890, and therein and thereby granted, bargained, sold, assigned, set over, released, conveyed and confirmed unto your orators, and to the survivor of them, and to their successor or successors in the trust therein and thereby created and declared, certain railroads and property described in said mortgage as follows, (the words "party of the first part" and "railway company" in said description being used to designate the New Albany Company):

"All the present and in future to be acquired railway system and property of the said party of the first part, of every kind and nature, and however owned, held, leased or enjoyed, together with all the equipment, appurtenances and franchises now owned or at any time hereafter to be acquired by it, being more particularly described as follows: All the present line of railway extending from New Albany, Indiana, to Michigan City, in the same State, and also from Indianapolis, Indiana, to a point on the State line between Indiana and Illinois, about twenty miles southeast of the City of Chicago, Illinois, and also its proprietary and owned line of railroad, called the Bedford and Bloomfield Railroad, extending from Bedford to Switz City, in Indiana, and also its other proprietary and owned line of railroad, called the Orleans, West Baden and French Lick Springs Railroad, extending from Orleans to French Lick, Indiana, and also all its lands, station buildings, tracks and terminal facilities in the City of Louisville, Kentucky, and also all its rights, interest, proprietary and leasehold es-
34 tate and terminal facilities in the franchises, property, tracks and station buildings of the Chicago & Western Indiana Railroad Company, and in the Belt Railway Company of Chicago, in the City of Chicago, or elsewhere in the State of Illinois; and also

all its real estate, trackage, leasehold and contract rights and terminal properties, stations, sidings and franchises in the City of Indianapolis, Indiana, and also all its leasehold and contract rights, trackage and terminal facilities vested in the party of the first part by virtue of its certain written contracts with the Jeffersonville, Madison & Indianapolis Railroad Company, the Pennsylvania Company, and the Louisville Bridge Company, whereby the trains and traffic of the said party of the first part are moved and handled between the City of New Albany, Indiana, and the City of Louisville, Kentucky, the before mentioned system of railroads owned by the said party of the first part and exclusive of tracks leased and operated by it, being about five hundred and twelve miles in length, and situate in the Counties of Floyd, Clark, Washington, Orange, Lawrence, Greene, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, LaPorte, Marion, Hamilton, Boone, Clinton, Carroll, Jasper, Newton and Lake, in the State of Indiana, and Cook County, in the State of Illinois, and Jefferson County, in the State of Kentucky; and also all other railroads, extensions and branch lines which the railway company, party of the first part, may at any time hereafter create, own or acquire, whether by construction, purchase, consolidation or otherwise, whether
35 within the State of Indiana, or in any other State, including and conveying by these presents all the property of every sort or nature, real, personal and mixed, now owned by said railway company and all that it may in the future add, construct, or acquire, for the purposes of and connected with or appertaining to the railroads or railways above mentioned and described, whether now owned or hereafter to be constructed or acquired, together with all the lands, tracks, lines, rails, bridges, ways, buildings, shops, tanks, piers, wharves, structures, erections, turntables, fences, walls, fixtures, franchises, privileges and rights of the railway company, and also all locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured and unmanufactured materials, coal, wood and supplies of every kind belonging or appertaining to the railway company; also all the tools, incomes, issues and profits arising out of the said property and its operation, and all rights to receive and recover the same, also all estate, right, title and interest of the party of the first part in and to any and all real estate belonging to said party of the first part; also all leasehold lands, with the buildings thereon erected, it being the true intent and meaning of these presents that the said railway company, party of the first part, shall and doth convey to the said trustees all and all manner of franchises of every kind and description, however derived and wherever situate, all and all manner of

real estate or interest therein, wherever such real estate may
36 be situate, and all and all manner of personal property, of whatever nature or description the same may be, at the date of these presents owned or possessed by the said railway company, or which may, at any time hereafter, during the continuance of this trust, be acquired by the said railway company for purposes connected with or appertaining to the railroads or railways above mentioned or described, or intended to be hereby conveyed, whether now in existence or at any time hereafter to be constructed or acquired, whether within or without the State of Indiana; and also all choses in action of every kind and description, including bills receivable, book accounts, traffic balances, all books of record and all accounts of every kind and description, all papers, maps, inventories and documents in any wise referring or relating to the property or franchises hereby conveyed; and also all franchises and property and all personal rights or interest in any franchises or property of every kind and description, real, personal or mixed, and wherever the same may be situate, that may, at any time, before or after the date of this indenture, be acquired by or for the said railway company, for purposes connected with or appertaining to said railroads or railways, either now owned or hereafter to be acquired, all of which it is hereby covenanted shall enure, by way of accretion, to the benefit and advantage of said trustees and by way of further and better security for the bonds to be issued hereunder; it being intended and hereby expressly covenanted that the lien of this indenture shall embrace and bind
37 all railroads, real and personal property, choses in action, contract rights and franchises which the said railway company now owns, or at any time hereafter may own, as fully and to the same extent as if all such property were now in existence and owned by the said railway company, and were specifically described herein and conveyed hereby."

Bill of Co... plaint of C... Trust Co. ... Stotsenbu...

To have and to hold all and singular the above described premises to your orators, their and each of their successor or successors in the trust thereby created, to the only proper use and behoof of your orators, their and each of their successor or successors, in trust for the security of the bonds and coupons to be issued under said mortgage or deed of trust, and for the uses and purposes therein expressed.

VI. The said mortgage or deed of trust was authorized, made, executed, and delivered in all respects in conformity with law, and was duly recorded in the office of the recorder of Floyd

County, Indiana, May 7, 1890, in Book 20 of Mortgages at page 1, and was also duly recorded in all the other counties wherein the mortgaged property or any part thereof was or is situated, and in all places wherein said mortgage was or is by law required to be recorded. Your orators duly accepted the trust created in and by said mortgage or deed of trust before the recording of the same as aforesaid. Your orators refer to the said mortgage so recorded and to a true copy thereof annexed to this bill of complaint as a part thereof, marked "Exhibit A," for a particular statement of the terms and provisions of said mortgage or deed of trust
38 and of the bonds issued thereunder, and your orators pray that said copy of said mortgage or deed of trust marked "Exhibit A" may be taken in all respects as if it had been fully set forth in the body of this bill.

VII. The said bonds to the aggregate amount of $2,800,000 so made and executed as aforesaid were duly authenticated by the endorsement thereon of the certificate of the Central Trust Company of New York, one of your orators, as provided in said bonds and mortgage, and, so authenticated, were duly issued and delivered, and your orators are informed and believe that said bonds so issued and delivered have been duly issued, negotiated and sold to divers persons, who have thereby become bona fide holders thereof as purchasers of the same for value, and that all of said bonds are now outstanding, and valid and binding obligations of the New Albany Company. The holders of said bonds are numerous, and the names and residences of many of such holders are unknown to your orators.

In and by said mortgage or deed of trust it was expressly provided that $10,000,000 of the bonds authorized to be issued thereunder should be reserved to pay off, fund, exchange and retire the then outstanding bonds of said New Albany Company, to which reference has been made herein, but none of said bonds so reserved have been issued to take up, pay off or retire any of said outstanding bonds.

VIII. A part of the property covered by said mortgage consists of shares of the capital stock of sundry railroad companies owned by said New Albany Company, and representing cer-
39 tain interests and property rights of said New Albany Company in and to certain lines of railroad. Said shares of stock have been delivered to and deposited with the Farmers' Loan and Trust Company, defendant herein, under and by virtue of a certain

agreement bearing date May 18, 1886, to which said New Albany Company and said Farmers' Loan and Trust Company and said John H. Barker are parties, and which is known as a collateral trust agreement, and under said agreement said shares of stock were deposited with said Farmers' Loan and Trust Company as further security for the bonds issued under and secured by the mortgage to said Farmers' Loan and Trust Company and said John H. Barker, as trustees, bearing date January 1, 1886, and hereinbefore mentioned. The shares of stock, which have been so delivered to, and are now held by said Farmers' Loan and Trust Company, are the following:

(1) Nine thousand nine hundred and ninety-nine shares of the capital stock of the Chicago and Western Indiana Railroad Company, of the par value of $100 each.

(2) Two thousand three hundred and ninety-nine shares of the capital stock of the Belt Railway Company of Chicago, of the par value of $100 each.

(3) Eleven thousand nine hundred and ninety shares of the capital stock of the Bedford and Bloomfield Company, of the par value of $50 each.

(4) Two thousand nine hundred and ninety shares of the Orleans, West Baden and French Lick Springs Railway Company, of the par value of $100 each.

Your orators allege that said shares of stock are a part of the property covered by said mortgage made by said New Albany Company to your orators, and form a part of the security given by and under said mortgage for the payment of said said bonds which have been issued thereunder, and that your orators have a lien upon said shares of capital stock as security for the payment of said bonds, subject only to the lien of said Farmers' Loan and Trust Company and said John H. Barker under and by virtue of said mortgage made and executed to said Farmers' Loan and Trust Company and said John H. Barker, as trustees, and under and by virtue of said collateral trust agreement, dated May 18, 1886.

IX. The said New Albany Company made default in payment on the 1st day of November, 1896, of the installment of interest due on that day on all of said bonds issued and outstanding as aforesaid, and secured by said mortgage to your orators as aforesaid, and said default still continues. Your orators are informed

f Com-
t of Cent.
Co. and
enburg.

and believe that demand was duly made on the said New Albany Company for the payment of the said installment of interest due upon said bonds November 1, 1896, as aforesaid, and that such demand was made on or about the day when said installment of interest became due as aforesaid, and that the coupons representing said installment of interest, or many thereof, were duly presented, and payment thereof duly demanded, but that payment of said installment of interest and of said coupons was refused, and that, neither on said 1st day of November, 1896, nor at any time since, did said New Albany Company have or provide at its office or
41 agency in the City of New York, or elsewhere, any funds with which to pay said installment of interest or any part thereof, and your orators allege that no part of said installment of interest has been paid by said New Albany Company, or by any other person or corporation on its behalf, but that the whole of said installment of interest remains due, owing and unpaid.

X. Your orators further show that, on or about the 1st day of September, 1894, said New Albany Company made, executed and delivered to the Central Trust Company of New York (one of your orators) and to James Murdock, one of the defendants herein, as trustees, its certain other mortgage, securing bonds known as equipment five per cent. sinking fund mortgage gold bonds, and, in and by said mortgage, granted and conveyed unto said Central Trust Company and said Murdock, as trustees, the railways and property hereinbefore described, and also certain equipment and rolling-stock, which has been transferred to, and the title thereof vested in, said Central Trust Company of New York under and by virtue of the terms of said mortgage dated September 1, 1894, and has thus been subjected to the lien thereof. Said mortgage dated September 1, 1894, was made to secure an issue of bonds limited to $1,000,000, and your orators are informed and believe that all of said bonds have been authenticated by the endorsement thereon of the certificate of said Central Trust Company, and have been issued and delivered to said New Albany Company, and that 709 of said bonds, amounting to $709,000 of principal par value, have been
42 issued, negotiated and sold by said New Albany Company, and are now outstanding in the hands of holders of the same for value. Your orators allege that the lien of said mortgage dated September 1, 1894, was and is subsequent and subordinate in all respects to the lien of said mortgage to your orators bearing date May 1, 1890, upon all the railroads and property described in or covered by said mortgage dated May 1, 1890.

XI. In a certain cause now pending in the Circuit Court of

the United States for the District of Indiana, wherein John T. Mills, Jr., is complainant, and the Louisville, New Albany & Chicago Railway Company (one of the defendants herein) is defendant, such proceedings were had that on or about the 24th day of August, 1896, one William H. McDoel was appointed receiver of all the railroads and property of every description of the defendant New Albany Company, and thereupon said William H. McDoel, as such receiver, duly entered upon and took possession of all the railroads and property of the defendant New Albany Company, including all the property covered by and embraced in said mortgage to your orators. Thereafter, in a certain suit now pending in the Circuit Court of the United States for the Northern District of Illinois, between the same parties, a similar order was made and entered confirming such receivership of said William H. McDoel. Under and by virtue of the orders of said courts, said William H. McDoel now holds and has in his possession as receiver of this court all of the railroads and property of said New Albany Company, and this court, by virtue of such receivership, now has
43 all of said railroads and property in its possession and under its control.

XII. Your orators are informed and believe that the defendant New Albany Company is insolvent and wholly unable to pay its debts and obligations, and that the property and premises covered by the said mortgage so made to your orators as aforesaid, are of a value far less in amount than the amount of the bonds issued thereunder, and that said mortgaged property and premises are and constitute an inadequate security for the payment of the said bonds. Your orators further show that the financial affairs of the defendant New Albany Company are in an embarrassed condition, and your orators as trustees under said mortgage cannot execute or perform the trusts provided in and by said mortgage, or protect the rights of the holders of the bonds secured thereby, without the aid or interposition of this honorable court, sitting in equity, and without a judicial sale of all the mortgaged premises, franchises and appurtenances covered by the said mortgage or deed of trust, and that until such sale can be had and the proceeds thereof distributed it is expedient and necessary that all the said mortgaged property, of every nature and description whatsoever, shall be placed in the possession and under the control of a receiver or receivers, to be appointed by this honorable court, with such proper powers and control over the same as to this court shall seem just. Your orators are informed and believe that the said property covered by said mortgage constitutes and forms one railroad

of Com-
nt of Cent.
t Co. and
senburg.

44 system, and that it is for the interest of all parties that it should be sold as an entirety, and that the value of it in portions and sections is and will be much less than its value as a whole, and that said mortgaged premises are so situated that the same cannot be sold in separate parcels without great and irreparable loss and sacrifice.

XIII. Your orators further allege that there is due and owing from said defendant New Albany Company to your orators, or the holders of said bonds, the sum of $70,000, with interest from November 1, 1896. Your orators are informed and believe that no proceedings have been had at law or in equity for the collection of the debt secured by said mortgage, or any part thereof, save only this suit.

Your orators, therefore, in view of the premises, seek the aid of this Honorable Court in equity, wherein only adequate relief can be administered in matters of this nature, and prays as follows:

1. That the said mortgage, dated May 1, 1890, may be foreclosed.

2. That the lien of the said mortgage may be decreed and established as a lien upon the railroads and other property covered thereby and hereinbefore mentioned and described, including the shares of capital stock hereinbefore particularly mentioned, and that the amount due and to become due for principal and interest upon the said bonds outstanding and secured by said mortgage may be ascertained and determined.

45 3. That in default of the payment of the sum so found due within a time to be limited by the decree of this Honorable Court it may be decreed that the defendants and all persons claiming under them, or either of them, any interest in said mortgaged property as aforesaid, subsequent to the lien of said mortgage, be absolutely barred and foreclosed of and from all right or equity of redemption of, in and to said mortgaged premises or any part thereof, and that a sale of the whole of the mortgaged property and premises be ordered in accordance with law and the practice of this Honorable Court, and that the proceeds may be applied to the expenses of this suit and to the payment of the amounts found due as aforesaid, and the balance thereof as the court may direct.

4. That a receiver or receivers be appointed to take possession of the railroad, property, estate and franchises of the defendant New Albany Company, and the earnings and proceeds thereof, with power to operate the said railroads and property, and with all such power and authority as may be requisite to preserve the same until the sale thereof, as the same may be declared and ordered by this Honorable Court, and to secure the earnings of the said railroads and property to the use of the bondholders, and with such other powers and authority as are usually possessed by receivers in like cases, as this court may direct.

5. That the defendants and each of them, their officers, directors, and all other persons claiming or pretending to claim under them, may be restrained by injunction of this Honorable
46 Court from interfering with or disposing of said mortgaged premises, property and franchises, or any part or parts thereof, or any earnings or proceeds thereof.

6. That the defendants herein may answer all and singular the premises, but not under oath, which is hereby expressly waived.

7. That your orators may have such other and further relief in the premises as the nature and circumstances of the case may require, and to your Honors seem meet.

May it please your Honors to grant unto your orators not only a writ of injunction, conformable to the prayer of this bill, to be issued to the said Louisville, New Albany & Chicago Railway Company, James Murdock, The Farmers' Loan and Trust Company and John H. Barker, but also a writ of subpœna, to be directed to the said Louisville, New Albany & Chicago Railway Company, James Murdock, The Farmers' Loan and Trust Company, and John H. Barker, commanding them and each of them at a certain time, and under a certain penalty, to be therein specified, to be and appear before this Honorable Court, then and there to answer the premises, and to abide by the order and decree of this court herein, and that said corporations may appear herein according to law.

CENTRAL TRUST COMPANY OF NEW YORK,
By .....
Vice-President.
JOHN H. STOTSENBURG,
By .....
His Solicitors.
BUTLER, NOTMAN, JOLINE & MYNDERSE,
47 Solicitors for Complainants,
54 Wall Street, New York.

of Com-
nt of Cent.
t Co. and
senburg.

STATE, CITY AND COUNTY OF NEW YORK } ss.
SOUTHERN DISTRICT OF NEW YORK.

E. Francis Hyde, being duly sworn, deposes and says that he is an officer, to-wit, the second vice-president of the Central Trust Company of New York, one of the complainants in this suit; that he has read the foregoing bill of complaint, and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true; that the seal affixed to the said bill of complaint is the corporate seal of said complainant, and was thereunto affixed by due and proper authority.

Sworn to before me this....day of November, 1896.

48 EHHIBIT A.

ibit to same

This Indenture, made and entered into this first day of May, one thousand eight hundred and ninety, by and between the Louisville, New Albany and Chicago Railway Company, hereinafter called the Railway Company, a corproation duly created and existing under the laws of the State of Indiana, party of the first part, and the Central Trust Company of New York, a corporation duly created and existing under the laws of the State of New York, hereafter called the Trust Company, and John H. Stotsenburg, of New Albany, in the State of Indiana, parties of the second part;

Whereas, the party of the first part owns and is operating a system of railroads in the State of Indiana, about 512 miles in length, which is composed of a line from New Albany on the Ohio River to Michigan City on Lake Michigan, hereafter called the Main Line; and a line from Indianapolis to a junction with
49 the Chicago and Western Indiana Railroad, at a point on the State line between Indiana and Illinois, about twenty miles southeast of Chicago hereinafter called the Air Line, together with certain proprietary and leasehold interests in the franchises and railroads of the said Chicago and Western Indiana Railroad Company, and the Belt Railway Company, of Chicago, and in the terminal facilities of the said companies in and near the City of Chicago, Illinois; and all its real estate, buildings, tracks, trackage and terminal rights, facilities and approaches in the other cities

above mentioned and in the City of Louisville, in the State of Kentucky and between said City of Louisville, in the State of Kentucky and between said City of New Albany, and in the City of Indianapolis, Indiana; and is also the exclusive owner of the Bedford and Bloomfield, and the Orleans, West Baden and French Lick Springs Railroads. Exhibit to s

Whereas, the said system of railroad is subject to the following present liens, that is to say:

First. The Main Line from New Albany to Michigan City is subject to the lien of a mortgage, made July 1st, 1880, by the party of the first part to John C. New, of Indianapolis, and Washington C. DePauw, of New Albany, in the State of Indiana, as trustees, to secure three million dollars ($3,000,000) of bonds, bearing date July 1st, 1880, and payable July 1st, 1910, with interest at the rate of six per cent. per annum, hereafter called Main Line Bonds.

Second. The Air Line from Indianapolis to the State line of Illinois is subject to the lien of a mortgage made August 10th, 1881, by the party of the first part of John C. New, of Indianapolis, as trustee, to secure two million three hundred thousand dollars ($2,300,000) of bonds, bearing date August 10th, 1881, and payable August 10th, 1911, with interest at the rate of six per cent. per annum, hereafter called Air Line Bonds.

Third. The whole system of railroad is subject to the lien of a mortgage made January 1st, 1886, by the party of the first part to the Farmers' Loan and Trust Company of New York, and John H. Barker, of Michigan City, as trustees, to secure now outstanding bonds amounting to four million seven hundred thousand dollars ($4,700,000), bearing date January 1st, 1886, and payable April 1st, 1916, with interest at the rate of six per cent. per annum, hereafter called Consolidated Bonds.

Fourth. The whole of the said mortgage liens amount in the aggregate to ten million dollars ($10,000,000).

Whereas, at a meeting of the stockholders of the said railway company, party of the first part, duly and legally called and held on March 22, A. D. 1890, a preamble and resolutions were adopted by the affirmative votes of 32,641 shares of stock in the said company, which read as follows:

ibit to same

Whereas, it is very desirable for this company to fund its present bonded obligations into a single security bearing a lower rate of interest than those now outstanding and also to improve the condition of its railway, increase its equipment, buildings and facilities and also to construct from time to time as authorized by law, other extensions and railroads, so as to increase and develop the traffic of the system.

51 Therefore, resolved, that for the purpose of paying, funding, exchanging and retiring the mortgage bonds of this company now outstanding, and for constructing and acquiring extensions and additional lines of railroad, and for increasing the equipment, shops, buildings, sidings, appurtenances and facilities and improving the condition of this company's railroad, the board of directors and president and secretary of the Louisville, New Albany & Chicago Railway Company, be and they are hereby authorized and directed to issue the corporate coupon bonds of said company to be designated General Mortgage Gold Bonds, bearing interest at the rate of 5 per cent. per annum, and payable in fifty (50) years from May 1, 1890, to the amount of twenty-five thousand dollars ($25,000) per mile of main track of the present system of its railway, that is to say, five hundred and twelve (512) miles, of which ten million dollars ($10,000,000) shall be reserved and used exclusively for the purpose of paying off, purchasing, funding, exchanging and retiring the present outstanding bonds of this company to a like amount, which are secured by the different mortgages or deeds of trust upon some portion or all of its said railway; and also from time to time to issue such other bonds of the same class to the amount, and at the rate of twenty-five thousand dollars ($25,000) par value for each and every mile of main track of additional railroad actually owned by this company, either in the State of Indiana, or elsewhere, whether acquired by construction, purchase, consolidation or otherwise; and for the purpose of securing the payment of said bonds, the president and secretary

52 are authorized and directed to execute in the corporate name of this company, and on its behalf and under its corporate seal and to acknowledge and deliver unto such trustees as the board of directors shall select and appoint, a mortgage or deed of trust, bearing date May 1, 1890, conveying by way of mortgage all the railroad of this company now constructed and in operation, including all its branches, sidings and leasehold rights, and also all railroads, extensions and branches which may be hereafter created, built, purchased or acquired by this company, whether by construction, purchase, consolidation or otherwise and whether situate

within or without the State of Indiana, together with all the equipment and appurtenances at any time belonging to this company, or in use on its lines of railway wherever situate, and all and singular its property of every kind and nature, real, personal and mixed, now owned or at any time to be hereafter acquired, in possession or expectancy, including the corporate and other franchises of the company. Exhibit to

Resolved further, That the Board of Directors of this company may adopt such form of bonds and mortgage or deed of trust as they may think proper to carry into execution the general resolve and authority aforesaid. And,

Whereas, at a meeting of the Board of Directors of said railway company, party of the first part, duly and legally called and held on March 22, A. D. 1890, the said board in pursuance of the vote and directions of the said stockholders' meeting did adopt the following resolves which are at large spread upon the records of such meetings, viz.:

53 "Be it therefore resolved,

"In execution of the authority and direction of the above and foregoing action of the stockholders of this corporation, the Board of Directors do hereby empower and instruct the president and secretary of this corporation,

"First. To prepare, sign, seal and execute an issue of its coupon bonds of the general form and tenor following, subject only to the necessary variations as to the amount and serial numbers, each of said bonds being for the sum of one thousand dollars, or five hundred dollars, as the board may determine, viz.:

UNITED STATES OF AMERICA.

No..... STATE OF INDIANA. $1,000.

General Mortgage Gold Bond.

The Louisville, New Albany and Chicago Railway Company, a corporation of the State of Indiana, for value received hereby agrees to pay to the Central Trust Company of New York, or the bearer hereof, the sum of one thousand dollars in gold coin of the United States of the present standard of weight and fineness, at the

Exhibit to same

office or agency of said railway company, in the City of New York on the first day of May, in the year one thousand nine hundred and forty, with interest thereon in the meantime, at the rate of five per cent. per annum, payable semi-annually in like gold coin, on the first days of May and November, in each year, at the said New York office or agency, upon presentation of the coupons hereto annexed as they severally become due. The principal and interest of this bond is payable without relief from valuation or appraisement laws. In case of default in the payment of any coupon for a period of six months after presentation and demand, the principal of this bond may be declared to be due in the manner and with the effect and subject to the conditions contained in the mortgage or deed of trust which secures the payment hereof, as hereinafter mentioned.

54

This bond may be registered at the general office of the said railway company, or at its New York agency, at the option of the holder and thereafter, unless at any time registered as payable to bearer, will only be payable to such person as on this bond shall be designated from time to time as the last duly registered transferee or owner thereof.

This bond is one of a series of coupon bonds of like tenor and effect, and numbered consecutively from one upward and issuable by the said railway company under and in accordance with the terms and conditions of the mortgage or deed of trust hereinafter mentioned, for the purpose of retiring, funding and redeeming the existing bonded indebtedness of the said railway company, improving and equipping its railroad and acquiring, by construction or otherwise, extensions and branches thereof, whether in the State of Indiana or elsewhere. The total amount of bonds of this series authorized to be issued by said railway company is expressly limited by said mortgage or deed of trust as follows:

First: A present issue of twelve million, eight hundred thousand dollars, being at the rate of $25,000 per mile of main track of the present system of owned railroad of 512 miles of which amount ten million dollars of bonds, numbered from 10 to 10,000, both inclusive, shall be reserved and used exclusively for the purpose of purchasing, exchanging or retiring the present outstanding mortgage bonds of said railway company to a like amount, in the manner recited in the mortgage or deed of trust.

55

Second: Such additional issue from time to time as prescribed

in said mortgage or deed of trust as will amount to twenty-five thousand dollars par value for every mile of main track of additional railroad, extension or branch line, either constructed or acquired and owned by said railway company, whether by purchase, consolidation or otherwise and situate in the State of Indiana or elsewhere. Exhibit to

The payment of all and each of the bonds of this series, together with interest thereon, without reference to the time when any of such bonds shall be actually issued or certified, is secured by a mortgage or deed of trust of even date herewith, duly executed and delivered by the said company to the Central Trust Company of New York, and John H. Stotsenburg of Indiana, as trustees, conveying all and singular the railway, equipment, appurtenances, property, leasehold rights, terminal facilities, assets and franchises of the said railway company which it now owns, and all the railroads, extensions, branches, equipment, property and appurtenances which it may at any time hereafter own or possess, together with all privileges and franchises thereto appertaining, as in said mortgage or deed of trust is more particularly specified and described.

This bond shall not be valid, or entitled to any benefit of such
56 mortgage security until it has been duly certified by the trustee as provided in the said mortgage or deed of trust.

In witness whereof, the said Louisville, New Albany and Chicago Railway Company has caused its corporate seal to be hereto affixed and these presents to be signed by its president and attested by its secretary, and has caused each of the said coupons to be attested by the engraved signature of its secretary on this first day of May, A. D. one thousand eight hundred and ninety.

LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY.

[SEAL] By.....
President.

Attest:

.....
Secretary.

The coupons to be attached to such bonds shall be in the following form, and each shall have the signature of the secretary engraved thereon:

$25.

The Louisville, New Albany and Chicago Railway Company,

bit to same on November 1st, A. D. 1890, will pay to bearer twenty-five dollars, at its office or agency in New York, being six months' interest on its General Mortgage Gold Bond No.....

.....

Secretary.

Each of such bonds shall bear thereon a certificate to be duly signed by the Central Trust Company of New York, trustee, in the following form:

Trustee's Certificate.

This is one of a series of bonds numbered from one upward, issued by the Louisville, New Albany and Chicago Railway Company, referred to in the mortgage or deed of trust in said bond described; and this bond has been issued in accordance with the provisions of said mortgage or deed of trust.

THE CENTRAL TRUST COMPANY OF NEW YORK,

57 Trustee.

By .....,

Vice-President.

Second. The president and secretary of this company are hereby further empowered and instructed to prepare, proper form, a mortgage or deed of trust whereby, for the security and payment of the aforesaid issue of bonds and interest, this corporation shall convey and mortgage unto the Central Trust Company of New York and John H. Stotsenburg, of Indiana, as trustees, all and singular, the railroads, property, assets, equipment, appurtenances, leasehold rights, terminal facilities and franchises of this company at present owned, and all railroads, extensions, branches, property, equipment, appurtenances, leasehold rights, terminal facilities and franchises which it may hereafter own, either within or without the State of Indiana, and thereupon to sign, seal with the corporate seal, acknowledge and deliver said mortgage or deed of trust unto said trustees as the act and deed of this corporation, for the use and purposes therein expressed.

Now, therefore, this indenture witnesseth: That the said Louisville, New Albany and Chicago Railway Company, party of the first part, in consideration of the premises of and of one dollar, to it in hand paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained sold, assigned, set over, released, conveyed

and confirmed and by these presents doth grant, bargain, sell, assign, set over, release, convey and confirm unto the Central Trust Company of New York, and John H. 58 Stotsenburg, of the State of Indiana, parties of the second part, and to the survivor of them, and to their successor or successors in the trust herein and hereby created and declared, all the present and in the future to be acquired railway system and property of the said party of the first part of every kind and nature and however owned, held, leased or enjoyed, together with all the equipment, appurtenances and franchises now owned or at any time hereafter to be acquired by it, being more particularly described as follows: All the present line of railway, extending from New Albany, Indiana, to Michigan City in the same State, and also from Indianapolis, Indiana, to a point on the State line between Indiana and Illinois, about twenty miles southeast of the City of Chicago, Illinois, about twenty miles southeast of the City of Chicago, Illinois, and also its proprietary and owned line of railroad, called the Bedford and Bloomfield Railroad, extending from Bedford to Switz City, in Indiana, and also its other proprietary and owned line of railroad, called the Orleans, West Baden and French Lick Springs Railroad, extending from Orleans to French Lick, Indiana, and also all its lands, station buildings, tracks and terminal facilities in the City of Louisville, Kentucky, and also all its rights, interest, proprietary and leasehold estate and terminal facilities in the franchises, property, tracks and station buildings of the Chicago and Western Indiana Railroad Company, and in the Belt Railway Company of Chicago, in the City of Chicago, or elsewhere in the State of Illinois; and also all its real estate, trackage, leasehold and contract rights and terminal properties, stations, sidings and franchises 59 in the City of Indianapolis, Indiana, and also all its leasehold and contract rights, trackage and terminal facitities vested in the party of the first part by virtue of its certain written contracts with the Jeffersonville, Madison and Indianapolis Railroad Company, the Pennsylvania Company and the Louisville Bridge Company, whereby the trains and traffic of the said party of the first part are moved and handled between the City of New Albany, Indiana, and the City of Louisville, Kentucky, the before mentioned system of railroads owned by the said party of he first part and exclusive of tracks leased and operated by it, being about five hundred and twelve miles in length, and situate in the Counties of Floyd, Clark, Washington, Orange, Lawrence, Green, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Stark, La Port, Marion, Hamilton, Boone, Clinton, Carroll, Jasper, Newton, and Lake, in the State of Indiana, and Cook County, in the State of Illinois, and Jefferson

Exhibit to same County in the State of Kentucky; and also all other railroads, extensions and branch lines which the railway company, party of the first part, may at any time hereafter create, own or acquire, whether by construction, purchase, consolidation or otherwise, whether within the State of Indiana, or in any other state, including and conveying by these presents all the property of every sort or nature, real, personal and mixed, now owned by said railway company and all that it may in the future add, construct or acquire, for the purposes of and connected with or appertaining to the railroads or railways above mentioned and described, whether now owned
60 or hereafter to be constructed or acquired, together with all the lands, tracks, lines, rails, bridges, ways, buildings, shops, tanks, piers, wharves, structures, erections, turntables, fences, walls, fixtures, franchises, privileges and rights of the Railway Company, and also all locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured and unmanufactured materials, coal, wood and supplies of every kind belonging or appertaining to the Railway Company; also all tools, incomes, issues and profits, arising out of the said property and its operation, and all rights to receive and recover the same, also all estate, right, title and interest of the party of the first part in and to any and all real estate belonging to said party of the first part; also all leasehold lands, with the buildings thereon erected; it being the true intent and meaning of these presents that the said Railway Company, party of the first part, shall and doth convey to the said trustees all and all manner of franchises of every kind and description, however derived and wherever situate, all and all manner of real estate or interest therein, wherever such real estate may be situate, and all and all manner of personal property, of whatever nature or description the same may be, at the date of these presents owned or possessed by the said Railway Company, or which may, at any time be hereafter, during the continuance of this trust, be acquired by the said Railway Company for purposes connected with or appertaining to the railroads or railways above mentioned or described, or intended to be hereby conveyed, whether now in existence or at any time hereafter to be constructed or acquired,
61 whether within or without the State of Indiana; and also all choses in action of every kind and description, including bills receivable, book accounts, traffic balances, all books of record and all accounts of every kind and description, all papers, maps, inventories and documents in any wise referring or relating to the property or franchises hereby conveyed; and also all franchises and property and all personal rights or interest in any franchises or property, of every kind and description, real, personal or mixed,

and wherever the same may be situate, that may, at any time, before or after the date of this indenture, be acquired by or for the said Railway Company, for purposes connected with or appertaining to said railroads or railways, either now owned or hereafter to be acquired, all of which it is hereby covenanted shall enure, by way of accretion, to the benefit and advantage of said trustees and by way of further and better security for the bonds to be issued hereunder; it being intended and hereby expressly covenanted that the lien of this indenture shall embrace and bind all railroads, real and personal property, choses in action, contract rights and franchises which the Railway Company now owns, or at any time hereafter may own, as fully and to the same extent as if all such property were now in existence and owned by the said Railway Company, and were specifically described herein and conveyed hereby. Exhibit to

To have and to hold, all and singular, the above described premises to the trustees, their and each of their successor or successors in the trust hereby created, to the only proper use and
62 behoof of the said trustees, their and each of their successor or successors in trust, for the security of the bonds and coupons to be issued hereunder and for the uses and purposes hereinafter expressed, namely:

Article I.

Until default shall be made in the payment of the principal or interest secured by said bonds, or some of them and such default shall have continued for a period of six months, as hereinafter set forth, the Railway Company shall be permitted to possess, manage, operate and enjoy all and singular the mortgaged premises, with their appurtenances and to take, demand, use and enjoy the rents, incomes, profits and issues of all and singular the premises and property hereby conveyed, in the same manner and to the same effect as if this indenture had not been made.

Article II.

It being as hereinbefore recited, one of the objects and intentions of this indenture to borrow money by means of bonds to be issued hereunder, for the purpose of paying off, funding, exchanging and retiring the present outstanding bonds of the Railway Company secured by mortgages or deed of trust upon some portion or all of the property as hereinbefore recited, it is therefore

ibit to same covenanted and agreed that ten thousand of the bonds to be issued hereunder and secured hereby, representing ten million dollars ($10,000,000) of principal obligation, and being numbered from 1 to 10,000, both inclusive, shall from time to time be signed, sealed and executed by said Railway Company and thereupon certified by the Trust Company and used exclusively for the pur-
63 pose of exchanging for bonds of the Railway Company now outstanding representing an equal amount of principal and secured by some one of the three several mortgages or deeds of trust hereinbefore recited, that is to say:

Of the issue of its bonds amounting to three million dollars ($3,000,000), secured by its before mentioned mortgage, dated July 1, 1880, and covering the Main Line of railroad.

Of an issue of its bonds amounting to two million three hundred thousand dollars ($2,300,000), secured by its before mentioned motrgage, dated August 10, 1881, and covering the the Air Line division of such railroad.

Of an issue of its bonds called consolidated bonds, amounting to four million seven hundred thousand dollars ($4,700,000), secured by its before mentioned mortgage, dated January 1, 1886, and covering its entire line of railroad and appurtenances.

Such bond exchanges shall be made and conducted upon the terms and methods and subject to such conditions as may be agreed upon between the Railway Company and the said Trust Company.

Whenever any of the mortgage bonds of the railway company of either of the three classes aforesaid and now outstanding shall be exchanged for a bond of the series to be issued under this indenture, the said Trust Company shall thereupon stamp upon the face of each of said retired and exchanged bonds that the same is payable only to it as trustee hereunder and shall thereafter hold the same in trust uncanceled, but wholly as collateral security for the payment of all the bonds issued or to be issued under this
64 mortgage. Each and every of such exchanged bonds so held by said Trust Company and each and every of the present outstanding three mortgages or deeds of trust executed by the Railway Company shall remain in full force and effect in all respects until all the entire series of outstanding bonds of either one of said three different issues shall by purchase or exchange be re-

tired and be delivered unto the said Trust Company and until such time each and every of such bonds and the mortgages to secure the same shall retain all their liens, priorities and legal rights as fully as if this instrument had not been executed. The Trust Company as the holder in trust of such uncanceled bonds for the security and protection of the bonds from time to time issued under this mortgage shall have and exercise the same rights to enforce the mortgage under which any of said uncanceled bonds were issued, equally with any other holder of bonds of that class. Exhibit to same

Whenever the entire series of bonds authorized and now outstanding of either of the three classes of securities designed to be so retired and exchanged shall actually have come by purchase, exchange or retirement into the possession of the said Trust Company as aforesaid, then it shall take the necessary and proper means to cause the mortgage or deed of trust executed by the railway company to secure that class of bonds of which the whole issue has been exchanged, to be satisfied and canceled of record and shall thereupon also cause the said whole issue of bonds of that class in its hands to be canceled and destroyed.

65 It is expressly agreed that pending the ultimate cancellation of such exchanged bonds the payment of interest upon all the bonds which may be issued and outstanding under this mortgage, shall be deemed a satisfaction of all interest accrued up to the time of such payment, upon any and all of the exchanged and retired bonds held in trust by the Trust Company and no interest shall be deemed or held to be payable upon any of such exchanged, retired and uncanceled bonds secured by this mortgage.

Article III.

The said Trust Company shall, upon the execution, delivery and record of this mortgage, and upon the request of the Board of Directors or the Executive Committee of the Railway Company, certify bonds hereunder to the amount, at face value, of two million eight hundred thousand ($2,800,000) dollars, such bonds being numbered from 10,001 upward, and shall deliver the same to the said railway company.

Any additional bonds shall be certified and issued hereunder subject to the following conditions and limitations, viz.:

Whenever any mileage of main track of railroad, in addition

Exhibit to same

to its present system hereby conveyed, shall be from time to time acquired or built by the said railway company, either by purchase, construction, consolidation or otherwise and whether within or without the State of Indiana, and when such fact shall be made to appear to the said Trust Company by a certificate of the president or vice-president of the railway company, and an affidavit of its chief engineer, showing the exact length of the main track of additional railroads so acquired or built and the termini thereof and
66 in what State and counties the same is situate, and upon the recording of this mortgage or deed of trust, and such other proper deed of further assurance in such counties as may be deemed necessary, according to the laws of the State or States in which such additional railroad shall be situate, said Trust Company shall, upon the request of the Board of Directors or the Executive Committee of the said railway company, certify and deliver to the latter such further issue of bonds hereunder, at the rate of, but in no event exceeding, the amount at face value of twenty-five thousand dollars per mile of the main track of railroad so acquired or created, provided, however, that if any additional railroad acquired by the said railway company, either by purchase, consolidation or otherwise shall be already subject to any mortgage which is unsatisfied, then the amount of any such outstanding bonds, secured by such unsatisfied lien, shall be stated in the certificate of the president or vice-president of the said railway company, and thereupon the Trust Company shall only certify hereunder and deliver bonds to such an amount when added to such outstanding bonds secured by the unsatisfied mortgage, an such acquired additional railroad as will not exceed a total issue of twenty-five thousand ($25,000) dollars per mile of such main track so acquired.

The certificate of the President or Vice-President and the affidavit of the chief engineer of such Railway Company, shall in all cases be conclusive as to the mileage and liens recited and shall constitute full and complete authority for the said Trust Company to certify and deliver bonds hereunder at the rate per mile
67 herein provided for.

It is also expressly agreed that the said Trust Company shall from time to time, on request of the Board of Directors or Executive Committee of the said Railway Company, certify and deliver bonds hereunder (subject aiways to the limitation of twenty-five thousand (425,000) dollars per mile of main track) to the effect of simultaneous exchange or retirement of a like amount of any bonds which may constitute a prior and specific lien on any additional

railway property at the time when it may be hereafter acquired by the said Railway Company, party of the first part. Exhibit to

Article IV.

In case default in the payment of interest on any of the bonds secured by this indenture, shall be made and shall continue for the space of six months after such payment shall be duly demanded, then the trustees may, and if requested in writing by the holders of the majority of the bonds secured hereby and then outstanding, shall enter upon all and singular the mortgaged premises and every part thereof, and possess, operate, use and enjoy the same; and upon demand in writing being made by the trustees, the Railway Company shall immediately surrender possession of all and singular the mortgaged premises and property of every sort and description to the trustees. It shall also be lawful for the trustees, in case such default shall be made and continue as aforesaid and payment be demanded and in case such request of bondholders be made, as aforesaid, they shall do so, to sell and dispose of all the premises and property of every sort and description, hereby conveyed,
68 at public auction, in the City of New York or in Chicago, Illinois, as the Trustees may elect (such election, however, being subject to a right on the party of a majority in amount of the bondholders to designate at which of the two said places the sale shall be made), having first given notice of the time and place of such sale, by advertisement published not less than once a week, for three months next preceeding the time specified for the sale, in one or more newspapers published in the City of New York, and in one or more newspapers published in the City of Chicago, Illinois, and to adjourn the said sale from time to time, by announcement at the time and place advertised, without further advertisement, and to make and deliver to the purchaser or purchasers good and sufficient deed or deeds, in fee simple, which sale being made to the highest bidder, shall be a perpetual bar, both at law and in equity against the Railway Company and all other persons lawfully claiming the above described premises and property, or any part thereof, or any lien upon or interest in the same, through or from the said Railway Company, and after deducting from the proceeds of such sale a just allowance for all expenses thereof, including reasonable attorney and counsel fees, and any other necessary expenses incurred by the trustees in executing their trusts, including their own reasonable compensation, to apply the proceeds to the payment of the principal of such of the aforesaid bonds as may be at the time outstanding and unpaid, whether the same shall

bit to same or shall not have previously become due according to their tenor, and of the interest which shall at the time have
69 accrued on said principal and be unpaid, without discrimination or preference, but ratably according to the aggregate amount of such unpaid principal and such accrued and unpaid interest, and if after satisfaction thereof a surplus shall remain, to pay the same over to the Railway Company.

Article V.

In case default in the payment of interest on any of the bonds secured by this indenture shall be made and shall be duly demanded, then the trustees if they shall elect so to do, may, and if requested in writing by the holders of one-half of the bonds secured hereby and then outstanding, shall apply to some court or courts having proper jurisdiction in the premises, for a foreclosure of this deed of trust or mortgage and sale of the mortgaged property and premises and therein embraced, and for the appointment in the meantime of a receiver of all the mortgaged premises under this indenture, whether now owned or hereafter to be acquired. In the event of such right of foreclosure and sale accruing for non-payment of interest, immediately thereupon the whole amount of the principal of the bonds secured by this indenture, and then outstanding, shall at the option of a majority in amount of the holders of all the bonds issued hereunder and then outstanding, to be expressed in writing to the trustees, become at once due and payable.

Article VI.

If the trustees shall enter upon the mortgaged premises and
70 take possession, control and management thereof under any preceeding provision, they shall apply and administer the net revenue and income arising from the mortgaged premises during such possession, in the discharge and satisfaction of interest and principal secured by this indenture, as the same may become due and payable and in due order of priority. During such possession, occupation, control and management, the trustees shall only be liable for the exercise of good faith and of reasonable diligence and all expenses, loss and damage of every kind and nature growing out of such possession, control and management shall, to the extent that any liability is incurred thereby, constitute a charge upon the mortgaged premises exclusively.

The trustees during such possession shall have the right and

power to manage the property and premises and may enter into any and all contracts proper, ordinary and usual in such cases and generally do and perform such things in the premises as the Railway Company itself might do and perform had it remained in undisputed possession and control of the said property. Exhibit to same

Article VII.

Any right of action under this indenture is vested exclusively in the trustees and under no circumstances shall any bondholder or any number of bondholders have any right to institute an action or other proceedings on or under this indenture for the purpose of enforcing any remedy herein and hereby provided; and all actions and proceedings, whether by suit, entry or otherwise, for the
71 purpose of enforcing the provisions of this indenture shall be instituted and conducted by the trustees according to their sound discretion until the owners and holders of a majority of the bonds secured hereby and then outstanding shall unite in requesting in writing the trustees to do or refrain from doing some particular act or acts, or to pursue or to refrain from pursuing any particular line of conduct or policy connected with the enforcement of such security, accompanying such request with evidence to the satisfaction of the trustees that they are such actual owners of bonds and also with satisfactory indemnity to the trustees for all expenses and costs of every kind and also for all possible claims for damages; in which event the trustees shall conform to and carry out such written instructions and such written request and direction, and the acts of the trustees done in execution thereof shall be binding on all holders of bonds issued hereunder.

Article VIII.

In case of any sale of the premises embraced in this mortgage under a decree of any court having jurisdiction thereof, based on the foreclosure of this mortgage, or in the pursuance of advertisement without such decree as aforesaid, the trustees may, in their discretion, purchase, and they are hereby fully authorized and empowered to purchase the premises, property and franchises embraced herein, for the use and benefit of the holders of the
72 then outstanding bonds secured by this mortgage and having so purchased the said premises, property and franchises, the right and title thereto shall vest in the trustees, and no bondholder shall have any claim thereto or to the proceeds thereof, except for his pro rata share of the proceeds of said purchased premises,

Exhibit to same property and franchises, as represented in a new company or corporation, to be formed for the use and benefit of the holders of the bonds secured hereby and then outstanding; and the trustees may take such lawful measures as they may deem best for the interest of the bondholders, to organize or procure the organization of a new company or corporation for the benefit of the holders of the bonds secured by this indenture for the benefit of the holders of the bonds secured by this indenture and then outstanding. The said new company or corporation shall be organized upon such terms, conditions and limitations and in such manner as the holders of a majority of the then outstanding bonds secured by this mortgage shall in writing request or direct; and provision may, if such majority shall so elect, but not otherwise, be made in the organization of such new company or corporation for the interests of any or all of the holders of junior obligations of the Railway Company and for its stockholders and simple contract creditors, or any of them, and the trustees so purchasing shall thereupon convey the premises, property and franchises, so purchased by them, to such new company or corporation.

Article IX.

73 The Railway Company reserves and retains for itself, its successors and assigns, the right to sell, lease, and otherwise dispose of, free from the lien of this mortgage or deed of trust, any real or personal property now covered or affected or hereafter to be covered or affected, by this mortgage, which may no longer be required by the Railway Company for the purposes of its incorporation; provided however, that the proceeds of such sale, lease or disposition, shall be received by the trustees, if deemed necessary for the protection of the bonds issued hereunder, and be applied by them to the purchase of other property in the name of the Railway Company, to be subject to the lien hereof, or be applied to the purchase of bonds secured hereby, which bonds shall be thereupon canceled. Any conveyance by the Railway Company of any such real or personal property, in which the trustees shall join, shall convey the same free and discharged of any lien hereby created, if a recital to such effect shall be continued in such conveyance, but not otherwise; and in ces of such recital this indenture shall, as to the property so conveyed, be thereafter void and of no effect, and no obligation shall be imposed on the purchaser to see to the application of the purchase money.

Article X.

No holder of any bond hereby secured shall have recourse for

payment to any stockholder, or make any demand for the payment of any such bond against any such person under and in pursuance of any law imposing liability upon any stockholders of incorporated companies, whether such law be now in force or shall hereafter be enacted, or by reason of any cause whatever and the Railway
74 Company hereby expressly waives the benefit of any appraisal, stay or exemption law that may or at any time be in force and consents that any sale that may be and under the provisions of this mortgage shall be had in the same manner, and to the same effect, as if such appraisal, stay or exemption law did not exist.

Exhibit to

Article XI.

If the Railway Company shall well and truly pay the sums of money due upon the said bonds secured hereby, and the coupons thereto attached, required to be paid by it, which it hereby covenants to do, and shall well and truly keep and perform all the covenants, agreements and undertakings herein and hereby entered into and required to be kept and performed, according to the true intent and meaning of these presents, then in that case, the estate, right, title and interest of the trustees in the above described mortgaged property and premises shall cease, determine and become wholly void.

The trustees shall only be responsible for reasonable diligence in the management of the trust and shall not be answerable in any case for the act or default of any agent, attorney or employe selected with reasonable discretion. The trustees shall be entitled to be reimbursed for all proper outlays of every sort and nature, by them incurred in the discharge of this trust and to receive a reasonable and proper compensation for any duty they may at any time perform in the discharge of the same; and all such fees, commissions, compensations and disbursements shall constitute a lien on the mortgaged property and premises.

Article XII.

75 In case the office of trustee under this indenture shall become vacant by reason of incapacity, removal or resignation of the said parties of the second part, or either of them, or any successor, it shall be lawful for the holders of a majority in amount of the bonds hereby secured and then outstanding, to appoint a successor or successors, by a writing by them signed and upon such appoint-

Exhibit to same ment being made and said trust being accepted and written notice thereof to said railway company, any such successor or successors, substituted trustee or trustees, shall, without further act or deed, become vested with all and singular, the estate, right and powers, and shall perform all the duties of trustee in like manner and with the same effect as if it, they or he had been named in this instrument as trustee or trustees.

The word "trustee," "trustees" or successors," wherever used in this instrument, shall mean the trustees under this mortgage for the time being, whether original or substituted, with all the powers appertaining to its, his or their office.

Article XIII.

The railway company hereby agrees that it will well and truly pay the sum of money in the said bonds and in each of and all of them mentioned, together with the semi-annual interest due and to become due thereon, at the times and in the manner and at the places specified therein; and further that it will well and truly pay, or cause to be paid, all taxes, charges, rates, levies and assessments imposed, assessed or levied, upon the premises and property hereby mortgaged, conveyed and assigned, or intended so to be, or
76 any part thereof, and shall and will, at its own proper cost, expense and charge, do or cause to be done or performed, in order to preserve and keep valid and intact this lien or encumbrance upon all and singular the property and premises above described. The said railway company further agrees that it will, at all times hereafter maintain an office or agency in the City of New York for the registration of and the payment of interest upon the bonds issued hereunder.

Article XIV.

It is expressly agreed that no bond of this issue shall be valid until the certificate on the back thereof has been duly signed by the said Trust Company and that all bonds certified and issued hereunder shall have equal rights and security, no matter when the same are issued.

Article XV.

If the railway company, or its successors, shall well and truly pay, or cause to be paid, the several principal sums of money evidenced by the bonds legally issued at any time hereunder and the

coupons thereto attached, as they severally mature, according to the true intent and meaning of these presents, then and in such case the estate, right, title and interest of the trustees, parties of the second part, in and to each and every part of the property hereby mortgaged or intended to be shall at once and without further act or deed cease and determine and this indenture shall thenceforth become void and of no effect. Exhibit to

And it is further covenanted and agreed by the Railway Company to and with the trustees, that it will, from time to time
77 and at all times, upon reasonable request, make, execute, acknowledge and deliver, at its own expense, all such further acts, deeds, conveyances and assurances in law for the better assurance unto the trustees, upon the trusts and for the purposes herein expressed or intended, all and singular the property of every sort and description hereby mortgaged or conveyed in trust, or appearing, purporting, or intended to be, now owned, or possessed by, or vested in the said Railway Company, or that may hereafter be owned, possessed, acquired or vested in the Railway Company, as by the trustees or by their counsel learned in the law shall be reasonably, advised or required.

In witness whereof, the said Louisville, New Albany and Chicago Railway Company, the said party of the first part has caused these presents to be signed by its president, sealed with its corporate seal, and attested by its secretary; and to testify their acceptance of the trust hereby created, the said Central Trust Company of New York has caused this instrument to be signed in its behalf by its president, sealed with its corporate seal and attested by its secretary, and the said John H. Stotsenburg has hereunto affixed his hand and seal the day and year first above written.

LOUISVILLE, NEW ALBANY AND
[SEAL] CHICAGO RAILWAY CO.,
By WM. L. BREYFOGLE,
President.

Attest: W. H. LEWIS,
Secretary.

Witness:
JOHN MARSHALL,
JOHN B. HUGHES.

78 CENTRAL TRUST COMPANY OF NEW YORK,
[SEAL] By F. P. OLCOTT,
President.

Attest: C. H. P. BABCOCK,
Secretary.

Accepted, JOHN H. STOTSENBURG.

Exhibit to same STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

Be it remembered, that on this third day of May, A. D. 1890, before me, a Notary Public, residing in said State and County, personally appeared William L. Breyfogle, president of the Louisville, New Albany and Chicago Railway Company, personally known to me to be the real person, whose name is subscribed to the foregoing instrument, and acknowledged that he, in behalf of said railway company, and by authority of its board of directors, had signed and delivered the said instrument, as the free and voluntary act of the said railway company, for the uses and purposes therein set forth; also personally appeared before me at the same time William H. Lewis, secretary of said railway company, personally known to me to be such secretary, and personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he, on behalf of said railway company, and by like authority had signed the said instrument, and affixed thereto the official corporate seal of said railway company, as the free and voluntary act of the said Louisville, New Albany and Chicago Railway Company for the uses and pur-
79 poses therein set forth, that he knew the corporate seal so affixed is said corporate seal.

In witness whereof, I have hereunto set my hand, and affixed my official seal this third day of May, 1890.

[SEAL] WM. L. KINNAN,
Notary Public.

STATE OF INDIANA, } ss.
COUNTY OF FLOYD. }

The foregoing instrument was filed for record in the recorder's office of Floyd County, on the.....day of May, A. D. 1890, at....o'clock in the....of that day, and duly recorded in Book....of Mortgages, on page....and following.

.....
Recorder of Floyd County.

STATE OF INDIANA, } ss.
COUNTY OF CLARK. }

The foregoing instrument was filed for record in the record-

er's office of Clark County, on the.....day of May, 1890, at Exhibit to same
....o'clock in the....of that day, and duly recorded in Book....
of Mortgages, on page....and following.

....
Recorder of Clark County.

STATE OF INDIANA, } ss.
COUNTY OF WASHINGTON. }

The foregoing instrument was filed for record in the recorder's office of Washington County on the.....day of May, 1890, at ...o'clock in the....of that day, and duly recorded in Book ....of Mortgages, on page ...and following.

80 .....
Recorder of Washington County.

STATE OF INDIANA, } ss.
COUNTY OF ORANGE. }

The foregoing instrument was filed for record in the recorder's office of Orange County on the.....day of May, 1890, at....o'clock in the....of that day, and duly recorded in Book ....of Mortgages, on page....and following,

.....
Recorder of Orange County.

STATE OF INDIANA, } ss.
COUNTY OF LAWRENCE. }

The foregoing instrument was filed for record in the recorder's office of Lawrence County on the.....day of May, 1890, at....o'clock in the....of that day, and duly recorded in Book ....of Mortgages, on page....and following.

Recorder of Lawrence County.

STATE OF INDIANA, } ss.
COUNTY OF MONROE. }

The foregoing instrument was filed for record in the recorder's office of Monroe County on the.....day of May, 1890, at....o'clock in the....of that day, and duly recorded in Book ....of Mortgages, on page....and following.

.....
Recorder of Monroe Connty.

Exhibit to same STATE OF INDIANA, } ss.
COUNTY OF OWEN. }

81 The foregoing instrument was filed for record in the recorder's office of Owen County on the.....day of May, 1890, at....o'clock in the....of that day, and duly recorded in Book ....of Mortgages, on page....and following.

.....
Recorder of Owen County.

STATE OF INDIANA, } ss.
COUNTY OF PUTNAM. }

The foregoing instrument was filed for record in the recorder's office of Putnam County on the.....day of May, 1890, at....o'clock in the....of that day, and duly recorded in Book....of Mortgages, on page....and following.

.....
Recorder of Putnam County.

STATE OF INDIANA, } ss.
COUNTY OF MONTGOMERY. }

The foregoing instrument was filed for record in the recorder's office of Montgomery County on the.....day of May, 1890, at....o'clock in the....of that day, and duly recorded in Book....of Mortgages, on page....and following.

.....
Recorder of Montgomery County.

STATE OF INDIANA, } ss.
COUNTY OF TIPPECANOE. }

The foregoing instrument was filed for record in the recorder's office of Tippecanoe County on the.....day of May, 1890, at....o'clock in the....of that day, and duly recorded in Book.... of Mortgages, on page....and following.

.....
Recorder of Tippecanoe County.

STATE OF INDIANA, } ss.
COUNTY OF WHITE. }

The foregoing instrument was filed for record in the record-

82 er's office of White County on the.....day of May, 1890, Exhibit to
at....o'clock in the....of that day, and duly recorded in Book....of Mortgages, on page....and following.

Recorder of White County.

STATE OF INDIANA, } ss.
COUNTY OF PULASKI. }

The foregoing instrument was filed for record in the recorder's office of Pulaski County on the.....day of May, 1890, at ....o'clock in the....of that day, and duly recorded in Book.... of Mortgages, on page....and following.

.....
Recorder of Pulaski County.

STATE OF INDIANA, } ss.
COUNTY OF STARK. }

The foregoing instrument was filed for record in the recorder's office of Stark County, on the.....day of May, 1890, at ....o'clock in the....of that day, and duly recorded in Book.... of Mortgages. on page ..and following.

.....
Recorder of Stark County.

STATE OF INDIANA, } ss.
COUNTY OF LAPORTE. }

The foregoing instrument was filed for record in the recorder's office of Laporte County, on the.....day of May, 1890, at....o'clock in the....of that day, and duly recorded in Book ....of Mortgages, on page....and following.

83 .....
Recorder of Laporte County.

STATE OF INDIANA, } ss,
COUNTY OF MARION. }

The foregoing instrument was filed for record in the recorder's office of Marion County, on the ..... day of May, 1890, at .... o'clock in the .... of that day, and duly recorded in Book .... of Mortgages, on page .... and following.

....,
Recorder of Marion County.

Exhibit to same STATE OF INDIANA, }
COUNTY OF HAMILTON. }

The foregoing instrument was filed in the recorder's office of Hamilton County, on the..... day of May, 1890, at .... o'clock in the .... of that day, and duly recorded in Book .... of Mortgages, on page .... and following.

.... ,
Recorder of Hamilton County.

STATE OF INDIANA, }
COUNTY OF BOONE. } ss,

The foregoing instrument was filed for record in the recorder's office of Boone County, on the ..... day of May, 1890, at .... o'clock in the .... of that day, and duly recorded in Book .... of Mortgages, on page .... and following.

.....
Recorder of Boone County.

STATE OF INDIANA, }
COUNTY OF CLINTON. } ss.

The foregoing instrument was filed for record in the recorder's
84 office of Clinton County, on the ..... day of May, 1890, at .... o'clock in the .... of that day, and duly recorded in Book .... of Mortgages, on page .... and following.

.....,
Recorder of Clinton County.

STATE OF INDIANA, }
COUNTY OF CARROLL. } ss.

The foregoing instrument was filed for record in the recorder's office of Carroll County, on the ..... day of May, 1890, at .... o'clock in the .... of that day, and duly recorded in Book .... of Mortgages, on page .... and following.

....
Recorder of Carroll County.

STATE OF INDIANA, }
COUNTY OF JASPER. } ss.

The foregoing instrument was filed for record in the recorder's office of Jasper County, on the .... day of May, 1890, at ....

Exhibit to

o'clock in the .... of that day, and duly recorded in Book .... of Mortgages, on page .... and following.

....,
Recorder of Jasper County.

STATE OF INDIANA, }
COUNTY OF NEWTON. } ss.

The foregoing instrument was filed for record in the recorder's office of Newton County, on the ..... day of May, 1890, at .... o'clock in the .... of that day, and duly recorded in Book .... of Mortgages, on page .... and following.

....,
85 Recorder of Newton County.

STATE OF INDIANA, }
COUNTY OF LAKE. } ss.

The foregoing instrument was filed for record in the recorder's office of Lake County, on the.....day of May, 1890, at....o'clock in the....of that day, and duly recorded in Book....of Mortgages, on page....and following.

....
Recorder of Lake County.

STATE OF KENTUCKY, }
COUNTY OF JEFFERSON. } ss.

The foregoing instrument was filed for record in the recorder's office of Jefferson County, on the....day of May, 1890, at.... ....o'clock in the....of that day, and duly recorded in Book.... of Mortgages, on page....and following.

....
Recorder of Jefferson County.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

The foregoing instrument was filed for record in the recorder's office of Cook County, Illinois, on the....day of May, 1890, at....o'clock in the....of that day, and duly recorded in Book ....of Mortgages, on page....and following.

.....
Recorder of Cook County.

86 And now comes the defendants, John H. Barker and The Farmers' Loan and Trust Company, by Turner, McClure & Rolston, their solicitors; and the defendant, the Louisville, New Albany & Chicago Railway Company, by G. W. Kretzinger, its solicitors; and the defendant, James Murdock, by Henry W. Calhoun, his solicitor; and enter their appearance herein.

And at the same time, on said 12th day of November, 1896, before the Honorable William A. Woods, Judge of said court, the following further proceedings in the above entitled cause were had to-wit:

Bill of Complaint of Cent. Trust Co. and Barker.

Come now the complainants, by Turner, McClure & Rolston, their solicitors, and file their bill of complaint herein, in cause No. 9,401, in the words following, to-wit:

To the Honorable, the Judges of the Circuit Court of the United States for the District of Indiana, in equity sitting:

The Farmers' Loan and Trust Company, a corporation duly created by and under the laws of the State of New York, and a citizen of the State of New York, having its principal office
87 and place of abode in the City of New York, and John H. Barker, a citizen of the State of Indiana, residing in Michigan City in said State of Indiana, bring this their bill of complaint, against the Louisville, New Albany and Chicago Railway Company, a corporation duly created and existing under the laws of the State of Indiana and Kentucky, and having its office and place of abode in the State of Indiana; and against the Central Trust Company of New York, a corporation duly created by and under the laws of the State of New York, and a citizen of the State of New York, having its principal office and place of abode in the City of New York; and against James Murdock, a citizen of the State of Indiana, residing in Lafayette in said State of Indiana; and against John H. Stotsenburg, a citizen of the State of Indiana, residing in New Albany, in said State of Indiana.

And thereupon your orators complain and say:

I. Your orator, the Farmers' Loan and Trust Company, is a corporation duly created under the laws of the State of New York, and as such corporation is fully authorized and empowered

to hold in trust the property conveyed to it in trust, as hereinafter fully stated, and to execute the trusts reposed in it under and by virtue of the mortgage or deed of trust hereinafter described; and your orator, John H. Barker, is a citizen of the State of Indiana.

II. The defendant, the Louisville, New Albany and Chicago Railway Company (hereinafter called the Railway Company) is a corporation duly incorporated and existing under the laws of the States of Indiana and Kentucky, with corporate capacity
88 to own and operate a railroad in said States and also to acquire, lease and operate additional lines of railroad in those and other States; the defendant, the Central Trust Company of New York, is a corporation duly incorporated and existing under the laws of the State of New York; and the defendants, James Murdock and John H. Stotsenburg, are citizens and each of them is a citizen of the State of Indiana.

III. On or about the first day of July, 1880, the defendant, the Railway Company, made its certain mortgage or deed of trust, by which it conveyed to John C. New, of Indianapolis, in the State of Indiana, and Washington C. DePauw, of New Albany, in the State of Indiana, as trustees, all its Main Line of Railroad and all its rolling stock and other property, acquired for use in connection with its said Main Line, and all its franchises, including its franchise to be a corporation, to secure an issue of its six per cent. bonds, bearing date July 1, 1880, payable July 1, 1910; and under the said mortgage there are now outstanding such bonds issued by said defendant, the Railway Company, to the aggregate amount of three million dollars. To the said mortgage, which is commonly known as the Main Line Mortgage, or to a duly certified copy thereof, your orator prays to refer as a part of this its bill of complaint.

IV. On or about the tenth day of August, 1881, the defendant, the Railway Company, made its certain other mortgage or deed of trust, by which it conveyed to John C. New, of Indianapolis, in the State of Indiana, as trustees, all its Air Line of railroad and all of its rolling stock and other property acquired
89 or to be acquired for use in connection with its said Air Line, and all its franchises, including its franchise to be a corporation, to secure an issue of its six per cent. bonds, bearing date August 10, 1881, payable August 1, 1911; and under the said mortgage there are now outstanding such bonds issued by said defendant, the Railway Company, to the aggregate amount of two

of Com-
nt of Cent.
st Co. and
ker.

million three hundred thousand dollars. To the said mortgage, which is commonly known as the Air Line Mortgage, or to a duly certified copy thereof, your orator prays to refer as a part of this bill of complaint.

V. Subsequently, and on the first day of January, 1886, the bonds issued under and secured by the above recited mortgage and each of them being outstanding and unpaid, the railway company, for the purpose of securing the payment of a further series of bonds of the railway company, executed, acknowledged and delivered, as party of the first part, to your orators, the Farmers' Loan and Trust Company and John H. Barker, as trustees, as parties of the second part, its certain other mortgage or deed of trust, known as its Consolidated Mortgage, wherein and whereby it conveyed and transfered to your orators, and to their successor or successors and assigns, all the following property and premises by the following description, to-wit:

"All the railway of the party of the first part in the city of Louisville, in the State of Kentucky, and extending from New Albany, on the Ohio river, to Michigan City in the State of Indiana, and from the city of Chicago, in the State of Illinois, to the Indiana State line, under a leasehold right, and from said State line to
90 the city of Indianapolis, in the State of Indiana, including the railway lying and being in all of said cities, and terminal rights and facilities and approaches thereto, the same being about four hundred and seventy-five miles in length, and running through the counties of Floyd, Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Stark, Laport, Marion, Hamilton, Boone, Clinton, Carroll, Jasper, Newton and Lake, in said State of Indiana, and Jefferson county in said State of Kentucky, and Cook county in said State of Illinois, and also all branches thereof, including all the property of every sort or nature now owned by said railway company, and all that it may in the future acquire for the purposes and connected with or appertaining to the railroads or railways above mentioned and described together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges and rights of the railway company, and also the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured and unmanufactured materials, coal, wood and supplies of every kind, belonging or appertaining to the railway company, also all the tolls, incomes, issues and profits, arising out of the said property, and all rights to receive and recover the same, also all estate,

right, title and interest of the party of the first part, in and to any and all real estate belonging to the said party of the first part, also all leasehold lands, with the buildings thereon erected, it being the true intent and meaning of these presents, that the

91 said railway company shall and doth convey to the said trustees, all and all manner of franchises of every kind and description, however derived and wherever situate, all and all manner of real estate or interest therein, wherever such real estate may be situate, and all and all manner of personal property, of whatever nature or description the same may be, at the date of these presents owned or possessed by the said railway company, or which may at any time hereafter during the continuance of this trust be acquired by the said railway company for purposes connected with or appertaining to the railroads or railways above mentioned or described; and also all choses in action, of every description, including bills reeeivable, book accounts, traffic balances, all books of record and all accounts of every kind and description, all papers, maps, inventories and documents in any wise referring or relating to the property or franchises hereby conveyed; and also all franchises and property and all personal rights or interest in any franchises or property of every kind or description, real, personal or mixed, and wherever the same may be situate, that may at any time, before or after the date of this indenture, be acquired by or for the said Railway Company, for purposes connected with or appertaining to said railroads or railways; all of which it is hereby covenanted shall inure by way of accretion to the benefit and advantage of said trustees, and by way of further and better security."

VI. The said consolidated mortgage was made and was therein recited as made subject always to the prior lien of the above recited Main Line Mortgage and Air Line Mortgage, date respectively July 1, 1880, and August 10, 1881, and to the bonds issued and to be issued thereunder.

92 VII. The said consolidated mortgage was so made as aforesaid to secure a series of consolidated mortgage bonds to be made by the said Railway Company, dated January first, 1886, each of the sum of one thousand dollars aggregating ten million dollars of principal, payable on the first day of April, 1896, in the United States gold coin of the then present standard weight and fineness, and interest thereon in the meantime at the rate of six per cent. per annum, payable semi-annually in like gold coin on the first day of April and on the first day of October in each year, upon presentation and surrender of certain coupons or interest warrants thereto

Bill of Complaint of Cent. Trust Co. and Barker.

annexed as they might severally respectively mature, free from all United States Government tax. Upon each of said bonds there was a certificate, made by your orator, the Farmers' Loan and Trust Company, stating that said bond was secured by the mortgage therein mentioned, being the consolidated mortgage above described; all of which, by the said bonds and each of them and the said certificates thereon, to which your orators for greater certainty refer, will more fully and at large appear.

VIII. The said consolidated mortgage was and is the proper act and deed of the Railway Company, by it authorized, made and delivered in all respects in conformity with law; and the same was duly recorded in the office of the Recorder of the County of Floyd, in the State of Indiana, on the 14th day of January, 1886, in Book 15 of Mortgages, on pages 317 and following, and also in a 93 large number of other clerks' and recorders' offices in counties where property affected thereby was situated; and the same is a valid conveyance for the purposes therein stated. The trusts therein and thereby created were duly accepted by your orators before the recording of the said consolidated mortgage as aforesaid. Your orators attach to this, their bill of complaint, as Exhibit "A," a copy of said consolidated mortgage, and, referring thereto, pray that the same may be taken as part hereof.

IX. Under and by virtue of the said Consolidated Mortgage or deed of trust, your orator, the Farmers' Loan and Trust Company, being thereunto duly requested, certified, in the form set forth therein, four thousand seven hundred of the bonds mentioned and described in the said Consolidated Mortgage and to secure which the same was executed and delivered as aforesaid, aggregating four million seven hundred thousand dollars of principal; and a large number of said bonds are outstanding and existing obligations on the part of the Railway Company.

X. Default has been made by the defendant, the Railway Company, in the payment on the first day of October, 1896, of the coupon interest due on that day on all the said Consolidated Mortgage bonds which have been issued and are outstanding as aforesaid, and all interest on all the said bonds from that day remains overdue and unpaid, including the interest due on that day as aforesaid. Demand has been duly made of the Railway Company and of its receivers for the payment of the interest on some of the bonds which fell due as aforesaid, and payment of the same has been refused.

Bill of Complaint of Cent. Trust Co. and Barker.

94 XI. The owners and holders of a large number of said Consolidated Mortgage bonds have requested in writing your orators to commence this suit and to forclose the said Consolidated Mortgage or deed of trust. The owners of the bonds secured thereby are numerous and the names and residences of many of such bond holders are unknown to your orators, so that your orators cannot allege with greater certainty than they have already done the number of said bonds outstanding, constituting valid claims against the said defendant, the Railway Company, or the amount of the indebtedness by virtue of the same.

XII. On or about the 18th day of May, in the year 1886, the defendant, the Railway Company, made and entered into a certain agreement, known as its Collateral Trust Agreement, bearing date that day, wherein and whereby the said defendant, the Railway Company, as party of the first part, covenanted and agreed with your orators the Farmers' Loan and Trust Company and John H. Barker, as Trustees, parties of the second part, to deposit and pledge with your orator, the Farmers' Loan and Trust Company (1) Ten thousand shares of the capital stock of the Chicago and Western Indiana Railroad Company, then owned by the defendant, the Railway Company; (2) Four hundred shares of the capital stock of the Belt Railway Company of Chicago, then owned by said defendant, the Railway Company; (3) Twelve thousand shares of the capital stock of the Bedford and Bloomfield Company, then owned by the defendant, the Railway Company; and (4), any and all other stocks or bonds of branch roads, railroads or extensions which might be thereafter required by the defendant, the Railway Com-
95 pany, by the use of any of the Consolidated bonds, or the proceeds thereof, reserving and retaining, however, from said deposit and pledge in respect of each company the stock of which was to be deposited and pledged, such an amount of stock as it might be necessary to keep outstanding in different hands for the purpose of maintaining the organization of such company; and for the purpose of giving effect to such deposit and pledge, the defendant, the Railway Company, did, in and by said Collateral Trust Agreement, further covenant and agree that it would, at or prior to the deposit and pledge therein contemplated, execute full and sufficient instruments, or cause to be executed by the person or persons in whose names the stocks and bonds which were to be deposited and pledged might stand, full and sufficient instruments of assignment and transfer of said stock and bonds to your orator, the Farmers' Loan and Trust Company, as Trustee, which instruments

Bill of Complaint of Cent. Trust Co. and Barker.

of assignment and transfer should severally contain a power of attorney fully authorizing the Farmers' Loan and Trust Company to transfer to itself as trustee, on the books of the Company to whose stock or bonds the assignment or transfer might relate the stock or bonds covered by such instruments of assignment or transfer.

XIII. In and by said Collateral Trust Agreement it was further, among other things, covenanted and agreed by said Railway Company that the stocks and bonds which should be deposited and pledged as therein provided should be held by your orator,
the Farmers' Loan and Trust Company, as Trustee, and its
96 successor or successors in trust, for the following uses, that is to say, among other things, to secure the payment of the principal and interest of all the said Consolidated bonds, and for the use and benefit of the person or persons, firm or firms, body or bodies politic or corporate, who at any time might become the purchasers and holders, owners or bearers of either or any of the said bonds, and subject to the terms, provisions and stipulations in the said bonds contained, and in case of default in the payment of interest on any of said Consolidated bonds should be made and should continue for the space of six months, then and in that event the stocks and bonds which should have been deposited and pledged, as therein provided, should be deemed to be part and parcel of the property described in and intended to be covered by the said Consolidated Mortgage of January 1, 1886, and all provisions in said mortgage which apply in such case to the property therein described and referred to should apply to the stocks and bonds which should be deposited and pledged as aforesaid, and that except as therein expressly provided, the rights, duties and liabilities of the parties thereto, and of the holders of said Consolidated bonds with reference to the stocks and bonds, which should be deposited and pledged as therein provided, should be the same as is provided in said Consolidated Mortgage of January 1, 1886, with reference to the property covered by said mortgage. Your orators attach to this their bill of complaint as Exhibit "B" a copy of said Collateral Trust Agreement, and referring thereto pray that the same may be taken as part hereof.

XIV. In accordance with the terms of said Collateral Trust
97 Company, has deposited with your orator, the Farmers' Loan and Trust Company, as trustee, as aforesaid (1) nine thousand nine hundred and ninety-nine shares of the capital stock of the Chicago and Western Indiana Railroad Company, of the par value of one hundred dollars each; (2) two thousand three hundred and

ninety-nine shares of the capital stock of the Belt Railway Company of Chicago, of the par value of one hundred dollars each; (3) eleven thousand nine hundred and ninety shares of the capital stock of the Bedford and Bloomfield Company of the par value of fifty dollars each; and (4) two thousand nine hundred and ninety shares of the Orleans, West Baden and French Lick Springs Railway Company of the par value of one hundred dollars each, and your orator, The Farmers' Loan and Trust Company, now holds said shares of stock in accordance with the provisions of said Collateral Trust Agreement.

XV. The defendant, the Railway Company, is insolvent and wholly unable to pay its debts and obligations, and the property and premises by the mortgages or deeds of trust above recited are and constitute very inadequate security for the payment of the amounts due on the said bonds. The property covered by the said consolidated mortgage or deed of trust, as your orators are informed and believe, is so situated that it cannot, nor can any part thereof be sold in parcels without great injury to the beneficiaries under your orators' trust hereinbefore set forth.

XVII. In a certain cause now pending in this court, in which
98 cause one John T. Mills, Jr., is complainant, and the defendant, the Louisville, New Albany and Chicago Railway Company, is defendant, such proceedings were had that on the 24th day of August, 1896, one William H. McDoel, of Chicago, in the State of Illinois, was duly appointed receiver of all the property of every sort and description of the defendant, the Louisville, New Albany and Chicago Railway Company; and said William H. McDoel, as such receiver, duly entered upon and is now in possession of the property of the said defendant, the Louisville, New Albany and Chicago Railway Company, and is managing and operating the same as such receiver.

XVIII. The defendant, the Central Trust Company of New York, James Murdock and John H. Stotsenburg, as your orators are informed and believe, have or claim to have some interest in or lien upon the property and premises described in said consolidated mortgage, but your orators allege that such interest or lien, if any, has accrued subsequently to said consolidated mortgage or deed of trust so made to your orators as aforesaid, and is in all respects junior and inferior to the lien thereof.

XIX. In consequence of the embarrassed condition of the

Bill of Complaint of Cent. Trust Co. and Barker.

financial affairs of the railway company and on account of the many difficulties which are manifest upon and from the allegations hereinbefore contained, involved in the execution of your orators' said trust, it is impossible for your orators, as trustees under the said consolidated mortgage or deed of trust, to execute their said trust in the way and manner specified and provided in and by the said consolidated mortgage or deed of trust, without the aid or interposition of this honorable court in chancery sitting; nor can the said trust be executed, as your orators are advised and charge, and the
99 rights of all the parties interested be ascertained and fully protected in the premises otherwise than by a judicial sale of the mortgaged premises, and of all the franchises, property, premises, and appurtenances covered by the said Consolidated Mortgage or deed of trust. Until such sale can be had and the proceeds thereof distributed, your orators are likewise advised and charge that it is expedient and necessary that the franchises, property, premises and appurtenances so mortgaged to your orators in trust as aforesaid, and all the rights, franchises and property of the Railway Company, of whatever name, nature and description, including all its money on hand and the earnings of the same, be placed in the hands and under the control of a receiver or receivers, to be appointed herein by this court, with such proper powers and control over the same as to the court shall seem right and equitable to be conferred.

In consideration whereof, and for as much as your orators are remediless in the premises, by the rules of the common law, and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable; to the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and that they may separately and severally answer, make (but not under oath, their answer under oath being hereby expressly waived), according to the best of their knowledge, information and belief, to all the matters and charges aforesaid, and that as fully in every respect as if the same were here again repeated and they
100 thereunto particularly interrogated that a receiver may be appointed in this cause of all and singular the rights, franchises and property, of every name and nature, of the defendant, the Louisville, New Albany and Chicago Railway Company, with power and authority to operate said railroad and all its connections and carry on the business of the Railway Company under the protection of this court, with all the usual powers and duties of receivers in such cases, and with authority to proceed to recover, by

suit or otherwise, all property in the hands of other parties belonging to the Railway Company, and all moneys justly due to it and unlawfully withheld by any person on any pretense whatever, that an injunction may issue out of this court, restraining and enjoining the Railway Company and all and every its agents and servants, from in any way interfering with the possession or control of the property of the Railway Company under the control of said receiver, and from selling, transfering, conveying, leasing or otherwise disposing of or incumbering any of the property, rights or franchises of the Railway Company; that all the rights and franchises, and all the property, real and personal, of the Railway Company, may be declared subject to the lien of the said Consolidated Mortgage; that an account may be taken of the number and amount of said bonds outstanding under the said Consolidated Mortgage and the interest due upon the same and on the coupons thereof; that the amount so found due may be found to be the first lien on the property of the Railway Company, according to the terms of the said Consolidated Mortgage or deed of trust, subject only to the superior and prior liens of the said Main Line and Air Line Mortgages above recited; that the said Railway Company may be decreed to pay the amount so found to be due upon the said Consolidated Mortgage bonds and the coupons thereto for interest or principal, or both; that in default thereof, all the property and franchises of the Railway Company may be sold under a decree of this court and according to law and the practice of this court, to satisfy the amount so found due; that out of the proceeds of said sale, or the net earnings while in the hands of said receiver so to be appointed, there may be paid, first, the costs and expenses of your orators in this suit, including proper attorneys' and counsel fees, with proper compensation to your orators for their own services as trustees, to be allowed by the court, and that the residue thereof may be applied to the payment of the amount due upon the said Consolidated Mortgage Bonds and the coupons thereto, with interest thereon; that if there be any surplus, it may be applied in such way as this court may direct; that all the defendants in this suit may be barred of and from any equity of redemption of and in the said property and franchises; and that any deficiency on such sale may be entered in this cause as a judgment against the said Railway Company; and that your orators may have such other and further relief in the premises as the circumstances of the case may require and as may be agreeable to equity; may it please your Honors to grant unto your orators a writ of subpœna issuing out of and under the seal of this court, directed to the defendants, the Louisville, New Albany and

Bill of Complaint of Cent. Trust Co. and Barker.

Bill of Complaint of Cent. Trust Co and Barker.

Chicago Railway Company, The Central Trust Company of New York, James Murdock and John H. Stotsenburg—to appear 102 and answer this bill.

And your orators will ever pray, etc.

THE FARMERS' LOAN AND TRUST COMPANY,
By R. G. ROLSTON,
President. (Seal.)

Attest:
E. S. MARSTON,
Secretary. (Seal.)

TURNER, MCCLURE & ROLSTON,
Solicitors for Complainants.

HERBERT B. TURNER,
Of Counsel.

UNITED STATES OF AMERICA. }
SOUTHERN DISTRICT OF NEW YORK. } ss.

Roswell G. Rolston, being duly sworn, says: That he is the president of The Farmers' Loan and Trust Company, the complainant above named; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true; that this verification is not made by the said complainant because it is a corporation; that his knowledge is derived from having taken part in the transaction spoken of and from statements made him, and from examination of the papers, and the same constitute his grounds of belief; that the seal affixed to said bill of complaint is the corporate seal of said complainant, and was so affixed by its authority.

R. G. ROLSTON.

Sworn to before me, this 6 day of November, 1896.

W. B. CARDOZO,
Notary Public (18), N. Y. County.

EXHIBIT A.

103 This indenture, made and entered into this first day of January, Exhibit to
one thousand eight hundred and eighty-six, by and between the Louisville, New Albany and Chicago Railway Company, hereinafter called the Railway Company, a corporation duly created and existing under the laws of the States of Indiana and Kentucky, party of the first part, and the Farmers' Loan and Trust Company, a corporation duly created and existing under the laws of the State of New York, and John H. Barker, of Michigan City, in the State of Indiana, hereinafter called the trustees, parties of the second part:

Whereas, The party of the first part owns and is operating a railroad in the State of Indiana, which is composed of a line from New Albany, on the Ohio river, to Michigan City, on Lake Michigan, hereinafter called the Main Line, and a line from Indianapolis to a junction with the Chicago and Western Indiana Railroad, at a point on the State line between Indiana and Illinois, about twenty miles southwest of Chicago, hereinafter called the Air Line, together with certain proprietary and leasehold interests in the franchises and railroad of the said Chicago and Western Indiana Railroad Company, and in the terminal facilities of the said company in the city of Chicago, and certain terminal rights, facilities and approaches in the other cities above mentioned, and in the city of Louisville, in the State of Kentucky, and between said city of Louisville and the City of New York; and,

Whereas, The said railroad is subject to the following liens, that is to say:

104 First. The Main Line is subject to the line of a mortgage made July first, 1880, by the party of the first part to John C. New, of Indianapolis, and Washington C. DePauw, of New Albany, in the State of Indiana, as trustee, to secure three million dollars ($3,000,000) of bonds, bearing date July first, 1880, payable July first, 1910, with interest at the rate of six per cent. per annum.

Second. The Air Line is subject to the lien of a mortgage, made August 10th, 1881, by the party of the first part to John C. New, of Indianapolis, as trustee, to secure two million three hundred thousand dollars ($2,300,000) of bonds, bearing date August

Exhibit to same 10th, 1881, and payable August first, 1911, with interest at the rate of six per cent. per annum.

Third. The whole road is subject to the lien of a mortgage, made February first, 1883, by the party of the first part, to the Farmers' Loan and Trust Company, of New York, W. M. Lewis, of New Albany, as trustees, to secure one million dollars ($1,000,000) of bonds, bearing date February first, 1883, and payable February first, 1888, with interest at the rate of six per cent. per annum.

Fourth. The whole railroad is subject to the lien of a mortgage, made by the party of the first part, March 24th, 1884, to the Farmers' Loan and Trust Company, and W. M. Lewis, of New Albany, as trustees, to secure three million dollars ($3,000,000) of bonds, bearing date March 24th, 1884, and payable April first, 1914, with interest at the rate of six per cent. per annum.

One million dollars ($1,000,000) of the said last mentioned
105 three million dollars ($3,000,000) of bonds are required by the terms of the said mortgage, to be delivered to the Farmers' Loan and Trust Company, as trustees, to be exchanged for bonds secured by and under the one million dollar ($1,000,000) mortgage of February first, 1883, above described, and have been so delivered.

Fifth. The whole of the said liens, after making the provision last aforesaid, amount to eight million three hundred thousand dollars ($8,300,000).

Whereas, at a meeting of the Board of Directors of the said Railway Company, duly and legally called and convened, the said board being fully authorized by law so to do, did resolve in substance and effect, for the purpose of providing means to satisfy and discharge the liens aforesaid, and refund the said indebtedness, and to borrow money for the objects of the organization of the said company, that the Railway Company, under its corporate seal, make and issue, from time to time, its certain other bonds and obligations, to the extent of ten million of dollars ($10,000,000), and, thereby, become indebted to divers persons, bodies politic or corporate who shall become holders thereof, the said bonds to be ten thousand in number, numbered consecutively from one to ten thousand inclusive, each of them to be for the sum of one thousand dollars ($1,000), and to bear date

on the first day of January, 1886, and to be payable on the first Exhibit to
day of April, 1916, in gold coin of the United States, of the present standard weight and fineness, with interest thereon to be payable on the first day of October, in each year, on presentation of the coupons to be attached thereto, and to be in the form and
106 contain the provisions following, that is to say:

UNITED STATES OF AMERICA,

STATE OF INDIANA.

Louisville, New Albany and Chicago Railway Company.

$1,000. $1,000.

Consolidated Mortgage Bond.

For value received, The Louisville, New Albany and Chicago Railway Company hereby promises to pay to the Farmers' Loan and Trust Company and John H. Barker, Trustees, or bearer, at the company's office, in the City of New York, on the first day of April, which will be in the year one thousad nine hundred and sixteen,

One Thousand Dollars

in United States gold coin, of the present standard weight and fineness, with interest payable in like gold coin, at the rate of six per centum per annum, semi-annually, free of United States Government tax, on the first days of April and October, in each year, until the principal is paid, on the presentation and surrender of the respective coupons hereto annexed, the principal and interest of this bond being payable without relief from valuation or appraisement laws. This bond is one of a series of ten thousand bonds, of like form and tenor, the payment of which is secured by a mortgage, or deed of trust, to the Farmers' Loan and Trust Company and John H. Barker, as trustees, bearing even date herewith and duly recorded, to which mortgage, or deed of trust, and the provisions and conditions thereof, reference is hereby made.
107 This bond shall not become obligatory until the certificate hereon endorsed shall be signed by the Farmers' Loan and Trust Company, Trustee. This bond may be registered at the office of the party of the first part, or at its agency in the City of New York, at the option of the holder, and thereafter, unless at any time registered payable to bearer, will only be payable to such person as on this bond shall appear, from time to time, to be the last duly registered transferee or owner thereof.

Exhibit to same

In witness whereof, The Louisville, New Albany and Chicago Railway Company has caused this bond to be signed by its president and secretary, and its corporate seal to be hereto affixed, this first day of January, one thousand eight hundred and eighty-six.

.....
President.

.....
Secretary.

And, whereas, at the meeting and for the purposes aforesaid, the said board of directors did further resolve, that for the purpose of equally securing all of the said bonds, the Railway Company, under its corporate seal, should make and deliver to the trustees a mortgage, or deed of trust, conveying, assigning and transferring to the trustees in trust, all its railroad and franchises, as hereinafter described, as security for the payment of said bonds, and each and all of them, and the interest to accrue thereon, upon the terms and conditions hereinafter contained, which were and are, by the said board of directors, deemed to be just and equitable.

Now therefore, this indenture witnesseth, that the Louisville,
108 New Albany and Chicago Railway Company, party of the first part, in consideration of the premises and of one dollar to it in hand paid, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, set over, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, assign, set over, release, convey, and confirm unto The Farmers' Loan and Trust Company and John H. Barker, parties hereto of the second part, and to survivor of them, and to their successor or successors in the trust herein and hereby created and declared, all the railway of the party of the first part in the City of Louisville, in the State of Kentucky, and extending from New Albany on the Ohio River to Michigan City in the State of Indiana, and from the City of Chicago in the State of Illinois, to the Indiana State line, under a leasehold right, and from said State line to the City of Indianapolis in the State of Indiana, including the railway lying and being in all of said cities, and terminal rights and facilities and approaches thereto, the same being about four hundred and seventy-five miles in length, and running through the counties of Floyd, Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Stark, Laport, Marion, Hamilton, Boone, Clinton, Carroll, Jasper, Newton and Lake, in said State of Indiana, and Jefferson County in said State of Ken-

tucky, and Cook County in said State of Illinois, and also all Exhibit
branches thereof, including all the property of every sort or nature now owned by said Railway Company, and that it may in the future acquire for the purposes and connected with or ap-
109 pertaining to the railroads or railways above mentioned and described, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges and rights of the railway company, and also all locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured and unmanufactured materials, coal, wood, and supplies of every kind, belonging or appertaining to the railway company, also all the tools, incomes, issues and profits, arising out of the said property, and all rights to receive and recover the same, also all estate, right, title and interest of the party of the first part, in and to any and all real estate belonging to the said party of the first part, also all leasehold lands, with buildings thereon erected; it being the true intent and meaning of these presents, that the said Railway Company shall and doth convey to the said trustees, all and all manner of franchises of every kind and description, however derived and wherever situate, all and all manner of real estate or interest therein, wherever such real estate or interest therein, wherever such real estate may be situate, and all and all manner of personal property, of whatever nature or description the same may be, at the date of these presents owned or possessed by the said Railway Company or which may at any time hereafter, during the continuance of this trust, be acquired by the said Railway Company for purposes connected with or appertaining to the railroads or railways above mentioned or described; and also all choses in action, of every kind and description, including bills receiv-
110 able, book accounts, traffic balances, all books of record, and all accounts of every kind and description, all papers, maps, inventories, and documents in any wise referring or relating to the property or franchises hereby conveyed; and also all franchises and property, and all personal rights or interest in any franchises or property, of every kind and description, real, personal or mixed, and wherever the same may be situate that may at any time, before or after the date of this indenture, be acquired by or for the said Railway Company, for purposes connected with or appertaining to said railways or railroads; all of which it is hereby covenanted shall incur by way of accretion to the benefit and advantage of said trustees, and by way of further and better security, this conveyance being made subject to the liens of certain mortgages heretofore made by the party hereto of the first part, namely: a

hibit to same mortgage dated July first, 1880, made to John C. New and Washington C. DePauw, as trustees, covering a portion of the above described premises; a certain other mortgage, dated August 10, 1881, made to John C. New, trustee, covering another portion of the above described premises; and also a mortgage made by the party of the first part hereto to the parties of the second part hereto, as trustees, dated February first, 1883:

To have and to hold, all and singular, the above described premises to the trustees their and each of their successors or successor, in the trust hereby created, to the only proper use and behoof of the said trustees, their and each of their successors or successor, in trust nevertheless for the uses and purposes here-
111 inafter expressed, namely:

First. To secure the payment of the bonds of the said railway company, to be issued as herein recited, and for the use and benefit of the persons, firm or firms, bodies politic or corporate, who shall at any time become the purchasers or holders, owners or bearers, of either or any of the said bonds, subject to the terms, provisions and stipulations in the said bond contained, which bonds, however, shall be equal in priority of lien, at whatever time the same may respectively have been issued.

Second. Until default shall be made in payment of the principal or interest secured by said bonds, or some of them, the railway company shall be permitted to possess, manage, operate and enjoy all and singular the mortgaged premises, with their appurtenances, and to take and use the rents, incomes, profits, and issues thereof, in the same manner and to the same effect as if this indenture had not been made.

Third. In case default in the payment of interest on any of the bonds secured by this indenture shall be made and shall continue for the space of six months, and such payment shall be duly demanded, then the trustees may, and if requested in writing by the holders of the majority of the bonds secured hereby and then outstanding, shall enter upon all and singular the mortgaged premises and every part thereof, and possess, operate, use and enjoy the same; and upon demand in writing being made by the trustees, the railway company shall immediately surrender possession of all and singular the mortgaged premises and property, of every sort and
112 description, to the trustees. It shall also be lawful for the trustees, in case such default shall be made and continue as

aforesaid, and payment be demanded, and in case such request of bondholders be made, as aforesaid, they shall do so, to sell and dispose of all the premises and property, of every sort and description, hereby conveyed, at public auction, in the City of New York, or in Chicago, Illinois, as the trustees may elect (such election, however, being subject to a right on the part of a majority of the bondholders to designate at which of the said two places the sale shall be made), having first given notice of the time and place of such sale, by advertisement published not less than once a week, for three months next preceeding the time specified for the sale, in one or more newspapers published in the City of New York, and in one or more newspapers published in the city of Chicago, Illinois, and to adjourn the said sale from time to time, by announcement at the time and place advertised, without further advertisement, and to make and deliver to the purchaser or purchasers, good and sufficient deed or deeds, in fee simple, which sale being made to the highest bidder, shall be a perpetual bar both at law and in equity, against the railway company and all other persons lawfully claiming the above described premises and property, or any part thereof, or any lien upon or interest in the same, through or from the said railway company, and after deducting from the proceeds of such sale a just allowance for all expenses thereof, including reasonable attorney and counsel fees, and any other necessary expenses incurred by the 113 trustees in executing their trust, including their own reasonable compensation, to apply the proceeds to the payment of the principal of such of the aforesaid bonds as may be at the time outstanding and unpaid, whether the same shall or shall not have previously become due, and of the interest which shall at that time have accrued on said principal and be unpaid, without discrimination or preference, but ratably to the aggregate amount of such unpaid principal and such accrued and unpaid interest; and if, after satisfaction thereof a surplus shall remain, to pay the same over to the railway company.

Exhibit to same.

Fourth. In case default in the payment of interest on any of the bonds secured by this indenture shall be made and shall continue for the space of six months, and such payment shall be duly demanded, then the trustees, if they shall elect so to do, may, and if requested in writing by the holders of one-half of the bonds secured hereby and then outstanding, shall apply to any court or courts having proper jurisdiction in the premises for a foreclosure of this deed of trust or mortgage, and sale of the mortgaged premises and property, and for the appointment in the meantime of a receiver of the mortgaged premises under this indenture, the trus-

Exhibit to same

tees to have the right to nominate and designate the person to be appointed receiver, and, so far as lawfully may be done, to control and direct the general course of the administration of the mortgaged premises by and on the part of such receiver. In the event of such right of foreclosure and sale accruing, for non-pay-
114 ment of interest, immediately thereupon the whole amount of the principal of the bonds secured by this indenture and then outstanding shall, at the option of the trustees, become due and payable, and this provision is expressly declared not to be in the nature of penalty for breach of condition or for the non-payment of interest, but to be a provision which is essentially necessary to carry out the objects and purposes of the parties hereto.

Fifth. If the trustees shall enter upon the mortgaged premises and take possession, control and management thereof under any preceding provision, they shall apply from the mortgaged premises during such possession, in the discharge and satisfaction of interest, or interest and principal, secured by this indenture, as the same may become due and payable and in due order of priority. During such possession, occupation, control and management, the trustees shall only be liable for the exercise of good faith and of reasonable diligence, and all expense, loss and damage of every kind and nature growing out of such possession, control and management shall, to the extent that any liability is incurred thereby, constitute a charge upon the mortgaged premises exclusively. The trustees, during such possession, shall have the right and power to manage the property and premises, and may enter into any and all contracts proper, ordinary and usual in such cases, whether by lease or otherwise, and may charge the same as a lien upon the mortgaged premises or any part thereof, and generally may do and perform such things in the premises as the Railway Company itself might do and perform had it remained in un-
115 disputed posesssion and control of the premises.

Sixth. If a receiver of the mortgaged premises shall be appointed under the provisions of this indenture, all the expenses incident to such appointment, including all his lawful obligations and expenses, shall constitute a lien upon the mortgaged premises to the lien of any of the bonds secured by this indenture. Such receiver shall have power to enter into contracts and obligations, and to do all other things incident to the management of the property and which the Railway Company would have had power to do had it remained in possession of the mortgaged franchises, premises and property. The right of action under this indenture is vested

exclusively in the trustees, and under no circumstances shall any bondholders or any number of bondholders have any right to institute an action or other proceeding on or under this indenture for the purpose of enforcing any remedy herein and hereby provided; and all actions and proceedings for the purpose of enforcing the provisions of this indenture shall be instituted and conducted by the trustees according to their sound discretion until the owners and holders of a majority of the bonds secured and then outstanding shall unite in requesting in writing the trustees to do or to refrain from doing some particular act or acts, or to pursue or to refrain from pursuing any particular line of conduct or policy connected with the enforcement of such security, accompanying such request with evidence to the satisfaction of the trustees that they are such actual owners of bonds, and also with satisfactory indemnity to the trustees for all expenses and costs of every kind, and also for all possible claims for damages. Exhibit to

116 Seventh. In case of any sale of the premises embraced in this mortgage, under a decree of any court having jurisdiction thereof, based on the foreclosure of this mortgage, or in pursuance of advertisement without such decree as aforesaid, the trustees may, in their discretion, purchase, and they are hereby fully authorized and empowered to purchase the premises, property and franchises embraced herein, for the use and benefit of the holders of the then outstanding bonds secured by this mortgage, and having so purchased the said premises, property and franchises, the right and title thereto shall vest in the trustees, and no bondholder shall have any claim thereto or to the proceeds thereof, except for his *pro rata* share of the proceeds of such purchased premises, property and franchises, as represented in a new company or corporation, to be formed for the use and benefit of the holders of the bonds secured hereby and then outstanding; and the trustees may take such lawful measures as they may deem for the interest of the bondholders to organize or procure the organization of a new company or corporation for the benefit of the holders of the bonds secured by this indenture and then outstanding. The said new company or corporation shall be organized upon such terms, conditions and limitations, and in such manner as the holders of a majority of then outstanding bonds secured by this mortgage shall in writing request or direct; and provision may, if such majority shall so elect, but not otherwise, be made in the organization of such new company for the interests of any or all the holders of junior obligations of the Railway Company, and for its stock-
117 holders and simple contract creditors, or any of them, and the trustees so purchasing shall thereupon convey the premises,

Exhibit to same property and franchises, so purchased by them, to such new company or corporation.

Eighth. In case it shall become necessary to institute proceedings for the forclosure and sale of the mortgaged premises, or should any such sale take place under the power above set forth, the trustees, shall aid, remote and encourage in all lawful ways any plan for the reorganization of the mortgaged premises and property, suggested for the benefit and advantage of the holders of bonds secured hereby, that they may deem most beneficial for such bondholders; and in case of any such sale the same shall be conducted under the general control and management of the trustees, and the trustees shall receive and distribute the proceeds of sale, except as otherwise provided in and by the plan of reorganization, in pursuance of which such sale may be had—it being understood and agreed that the trustees shall be guided and controlled in all such proceedings by the terms and provisions of any scheme of reorganization which shall receive the assent of the holders of a majority of the bonds secured by this indenture, and then outstanding, and shall be approved by the trustees.

Ninth. The railway company reserves and retains for itself, its successors and assigns, the right to sell, lease and otherwise dispose of, free from the lien of this mortgage or deed of trust, any real or personal property now covered or affected, or here-
118 after to be covered or affected by this mortgage, which may no longer be required by the railway company for the purposes of its incorporation; provided, however, that the proceeds of such sale, lease or disposition shall be received by the trustees, and be applied by them to the purchase of other property in the name of the railway company, to be subject to the lien hereof, or be applied to the purchase of bonds secured hereby, which said bonds shall be canceled. Any conveyance by the railway company of any such real or personal property, in which the trustees shall join, shall convey the same free and discharged of any lien hereby created, if a recital to such effect shall be contained in such conveyance, but not otherwise; and in case of such recital, this indenture shall, as to the property so conveyed, be thereafter void and of no effect; and no obligation shall be imposed on the purchaser to see to the application of the purchase money.

Tenth. No holder of any bond hereby secured shall have recourse for payment to any stockholder of the railway company, or to any person who has ever been such stockholder, or make any

demand for the payment of any such bond against any such person, under and in pursuance of any law imposing liability upon any stockholders of incorporated companies, whether such law be now in force or shall hereafter be enacted, or by reason of any cause whatever: and the railway company hereby expressly waives the benefit of any appraisal, stay or exemption law that may now or at any time be in force, and consents that any sale that may be had under the provisions of this mortgage shall be had in the same
119 manner and to the same effect, as if such appraisal, stay or exemption law did not exist.

Exhibit to same

Eleventh. If the railway company shall well and truly pay the sum of money by the said bonds secured hereby, and the coupons thereto attached, required to be paid by it, which it hereby covenants to do, and shall well and truly keep and perform all the covenants, agreements and undertakings herein and hereby entered into and required to be kept and performed, according to the true intent and meaning of these presents, then, and in that case, the estate, right, title and interest of the trustees in the above described property and premises shall cease, determine and become wholly void.

Twelfth. The trustees shall be under no obligation to recognize any person or persons, firm or corporation, as holder or holders, owner or owners, of one or more of the bonds secured hereby, or to do or refrain from doing, any act pursuant to the request or demand of any person or persons, firm or corporation, professing or claiming to be such holder or holders, until such supposed holder or holders shall produce the said bonds and deposit the same with the Farmers' Loan and Trust Company, and shall also indemnify and save harmless the trustee, to their full satisfaction, from any and all costs, expenses, outlays and counsel fees and other reasonable disbursements for which they may become liable or responsible on proceeding to carry out such request or demand, and for their reasonable and proper compensation in that behalf. Should any suit or other proceeding be brought in any court against the trus-
120 tees under this indenture, or by reason of any matter or thing connected with the trusts hereby created, or the premises affected hereby, the trustees shall thereupon notify the Railway Company of the fact by delivering such notice at the office of the Railway Company; and the trustees shall thereupon be under no obligation to enter an appearance by counsel, or in any way to appear in and defend the said suit or other proceeding until indemnified to their satisfaction for so doing; but they may appear in and defend the

Exhibit to same

same without indemnity if they shall elect so to do, and be compensated therefor from the trust fund. In case at any time it shall be necessary and proper for the trustees to make any investigation respecting any fact or facts, preparatory to taking any action, or doing or not doing anything, as such trustees, the certificate of the president of the Railway Company, under the corporate seal attested by the affidavit of one or more directors of the said corporation, shall be sufficient evidence of such fact or facts to protect the trustees in any action they may take or anything that they may do or refrain from doing, by reason of the supposed existence of such facts.

The trustees shall only be responsible for reasonable diligence in the management of the trust, and shall not be answerable in any case for the act or default of any agent, attorney or employee selected with reasonable discretion. The trustees shall be entitled to be reimbursed all proper outlays of every sort and nature by them incurred in the discharge of this trust, and to receive a reasonable and proper compensation for any duty they may at any time perform in the discharge of the same; and all
121 such fees, commissions, compensations and disbursements shall constitute a lien on the mortgaged property and premises.

Thirteenth. In case the office of trustee under this indenture shall become vacant by reason of incapacity, removal or resignation of the said parties of the second part, or either of them, or any successor, it shall be lawful for the holders of a majority in amount of the bonds hereby secured and then outstanding, to appoint a successor or successors, by writing by them signed, and upon such appointment being made, and the said trust be in accepted and written notice thereof to said railway company, any such successor or successors, substituted trustee or trustees, shall without further act or deed become vested with all and singular the estate, right and powers, and shall perform all the duties of trustee in like manner and with the same effect as if it, they or he had been named in this instrument, as trustee or trustees.

Fourteenth. The word "trustee," "trustees," or "successors," wherever used in this instrument, shall mean the trustees under this mortgage for the time being, whether original or substituted, with all the powers appertaining to his office or their office.

It is further covenanted and agreed between the parties hereto that eight thousand three hundred of the bonds to be issued under

and secured by the lien of this mortgage representing eight million three hundred thousand dollars ($8,300,000) of principal, shall be executed and delivered to the Farmers' Loan and Trust Company as trustee to be certified and used by the said trustee as fol-
122 lows, that is to say, Exhibit to

Three thousand thereof to be exchanged for bonds representing equal amounts of principal secured by and under the above mentioned mortgage for three million dollars ($3,000,000) upon the Main Line dated July first, 1880;

Twenty-three hundred thereof to be exchanged for bonds representing equal amounts of principal secured by and under the above mentioned mortgage on the Air Line, dated August first, 1881;

One thousand thereof to be exchanged for bonds, representing equal amounts of principal secured by and under the above mentioned mortgage on the whole road for one million dollars ($1,000,000), dated February first, 1883;

Two thousand thereof, to be exchanged for bonds representing equal amounts of principal secured by and under the above mentioned mortgage for three million dollars ($3,000,000), dated March 24th, 1884.

Such exchanges shall be had and conducted under the terms and subject to such conditions as may be agreed upon between the railway company and the Farmers' Loan and Trust Company; and may be made from time to time before or after the maturity of the bonds secured by the said mortgages or any of them.

The one thousand bonds issued under the three million dollars ($3,000,000) mortgage of March 24th, 1884, heretofore delivered to the said Trust Company to be exchanged for a like amount of bonds under the one million dollar ($1,000,000) mortgage of February first, 1883, shall be canceled by the said Trust Company
123 whenever all of the said eight thousand three hundred bonds under this mortgage have been delivered to said Trust Company, and all of the remaining two thousand bonds under the said mortgage of March 24th, 1884, have come into the hands of the said Trust Company by exchange as above provided.

Each of the bonds under any of the said prior mortgages so

Exhibit to same acquired by exchange, shall be received by the said Farmers' Loan and Trust Company, and shall thereupon be stamped upon the face thereof as payable only to the parties of the second part as Trustees and shall thenceforth be payable only to the said parties of the second part as Trustees, and shall be held by them as collateral security for the payment of all the bonds authorized under such prior mortgage, shall have come into the possession of the said Farmers' Loan and Trust Company.

Whenever all of the bonds authorized under any one of the prior mortgages aforesaid shall have come into the possession of the said Farmers' Loan and Trust Company as Trustees as aforesaid, the same shall be canceled, and the mortgage securing the same shall be discharged of record.

The payment of the interest upon all the bonds issued and outstanding under this mortgage shall be deemed a satisfaction of all the interest accrued at the time of such payment upon the bonds so held by the said Trustees, and no interest shall be payable upon the bonds so held until after default in the payment of interest on the bonds secured by this mortgage.

And it is further Covenanted and Agreed by the Railway Company, that it will well and truly pay the sums of money
124 in the said bonds, and in each and all of them mentioned, together with the semi-annual interest due and to become due thereon, at the time, and in the manner, and at the places specified therein; and further that it will well and truly pay, or cause to be paid, all taxes, charges, rates, levies and assessments imposed, assessed or levied or which hereafter may be imposed, assessed or levied upon the premises and property hereby mortgaged, conveyed and assigned, or intended so to be, or any part thereof, and shall and will, at its own proper cost, expense and charge, do, or cause to be done, all acts and things necessary and proper to be done, or performed, in order to preserve and keep valid and intact this lien or encumbrance upon all and singular the property and premises above described.

And it is further Covenanted and Agreed by the Railway Company, to and with the Trustees, that it will from time to time, and at all times upon reasonable request, make, execute, acknowledge and deliver, at its own expense, all such further acts, deeds, conveyances and assurances in law for the better assuring unto the Trustees, upon the trusts and for the purposes herein expressed or intended,

all and singular the property of every sort and description hereby mortgaged or conveyed in trust, or appearing, purporting to be, now owned or possessed by or vested in the said Railway Company, or that may hereafter be owned, possessed, acquired or vested in the Railway Company, as by the Trustees or their counsel learned in the law shall be reasonably devised, or advised or required. Exhibit to s

125 In testimony whereof, the corporations, parties hereto, have caused their respective corporate seals to be hereto affixed, and the same to be duly attested, and the said John H. Barker hath hereunto set his hand and seal, the day and year first above written.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY,
By WILLIAM DOWD,
President.

Attest:
WILLIAM DULLES,
Ass't Secretary.

[L. S.] THE FARMERS' LOAN AND TRUST COMPANY,
By R. G. ROLSTON,
President.

Attest:
WM. H. LEUPP,
Secretary.

JOHN H. BARKER (L. S.)

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK. } ss.

Be it remembered, that on this eighth day of January, A. D. 1886, before me, a commissioner of deeds for the States of Indiana and Kentucky, and Illinois, residing in said State, city and county aforesaid, personally appeared William Dowd, President of the Louisville, New Albany and Chicago Railroad Company, personally known to me to be the president of said company, and personally known to me to be the real person, whose name is subscribed to the foregoing instrument, and acknowledged that he, in behalf of said Railway Company, and by authority of its board of directors, had signed and delivered the said instrument, as the free and voluntary act, of the said Railway Company for the uses and purposes therein set forth; also personally appeared before me
126 at the same time William Dulles, Jr., Assistant Secretary of the said Railway Company, personally known to me to be

Exhibit to same

such assistant secretary, and personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he, on behalf of said Railway Company, and by like authority had signed the said instrument, and affixed thereto the official corporate seal of said Railway Company, as the free and voluntary act of the said Louisville, New Albany and Chicago Railway Company for the uses and purposes therein set forth, that he knew the corporate seal so affixed, is said corporate seal.

And also at the same time before me personally came Roswell G. Rolston, President of the Farmers' Loan and Trust Company, personally known to me to be the president of said company, and personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he, in behalf of said trust company, and by authority of its board of directors, had signed and delivered the said instrument as the free and voluntary act of the said Trust Company, for the uses and purposes therein set forth; also personally appeared before me at the same time, William H. Leupp, Secretary of the said Trust Company, personally known to me to be the secretary of said company, and personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he, on behalf of said Trust Company, and by like authority had signed the said instrument and affixed thereto the official seal of said
127 Trust Company as the free and voluntary act of the said Farmers' Loan and Trust Company for the uses and purposes therein set forth; that he knew the corporate seal of said company, and that the seal so affixed is said corporate seal.

And I further certify that this instrument of writing from the Louisville, New Albany and Chicago Railroad Company to the Farmers' Loan and Trust Company, and John H. Barker, Trustees, was at the time and place first above mentioned, produced to me by the president and the secretary of the said Railway Company and acknowledged as aforesaid.

In witness whereof, I have hereunto set my hand, and affixed my official seal, this eighth day of January, 1886.

[L. S.] CHARLES NETTLETON.
Commissioner for State of Indiana in New York.
CHARLES NETTLETON.
Commissioner for State of Kentucky in New York.
CHARLES NETTLETON,
Commissioner for State of Illinois in New York.

STATE OF INDIANA, } ss.
COUNTY OF LA PORT. }

Exhibit to same.

Be it remembered, that on the 11th day of January, A. D. 1886, before me, Jared H. Orr, Notary Public, duly commissioned and qualified, personally appeared John H. Barker, to me personally known to be the real individual described in, and who executed the foregoing instrument, and acknowledged that he had executed the same as his voluntary act and deed.

Witness my hand and official seal, at Michigan City, Ind., this 11th day of January, A. D. 11th day of January, A. D. 1886.

JARED H. ORR,
[L. S.] Notary Public.

STATE OF INDIANA, } ss.
COUNTY OF FLOYD. }

128 The foregoing instrument was filed for record in the recorder's office of Floyd County, on the 14th day of January, A. D. 1886, at seven o'clock in the afternoon of that day, and duly recorded in Book Fifteen of Mortgages on page 317 and following.

[L. S.] CHARLES SCHMONTZEL,
Recorder of Floyd County.

STATE OF INDIANA, } ss.
COUNTY OF CLARK. }

The foregoing instrument was filed for record in the recorder's office of Clark County, on the 16th day of January, A .D. 1886, at fifty minutes past one o'clock in the afternoon of that day, and duly recorded in Book Fifteen of Mortgages on page 423 and following.

[L. S.] EVAN SHELBY,
Recorder of Clark County.

STATE OF INDIANA, } ss.
COUNTY OF WASHINGTON. }

The foregoing instrument was filed for record in the recorder's office of Washington County, on the 14th day of January, A.

bit to same D. 1886, at five o'clock in the afternoon in Book F of Mortgages on page 507 and following.

[L. S.] PRESTON BRYAN.
Recorder of Washington County.

BY J. V. HAMILTON,
Deputy.

STATE OF INDIANA, } ss.
COUNTY OF ORANGE. }

129 The foregoing instrument was filed for record in the recorder's office of Orange County, on the 14th day of January, A. D. 1886, at six o'clock in the afternoon of that day, and duly recorded in Book Seven of Mortgages on page 300 and following.

WILLIAM W. WORRELL,
[L. S.] Recorder of Orange County.

STATE OF INDIANA, } ss.
COUNTY OF LAWRENCE. }

The foregoing instrument was filed for record in the recorder's office of Lawrence County, on the 14th day of January, A. D. 1886, at half-past two o'clock in the afternoon of that day, and duly recorded in Book Eleven of Mortgages on page 3.

JAMES A. MCPHERTERS.
[L. S.] Recorder of Lawrence County.

STATE OF INDIANA, }
COUNTY OF MONROE. }

The foregoing instrument was filed for record in the recorder's office of Monroe County, on the 14th day of January, A. D. 1886, at one o'clock in the afternoon of that day, and duly recorded in Book F of Mortgages on page 504 and following.

W. N. HALL,
[L. S.] Recorder of Monroe County.

STATE OF INDIANA, } ss.
COUNTY OF OWEN. }

The foregoing instrument was filed for record in the recorder's
130 office of Owen County, on the 15th day of January, A. D.

1886, at forty-five minutes past nine o'clock in the forenoon of Exhibit to s
that day, and duly recorded in Book M of Mortgages on page 54 and following.

FRANK STALEY,
[L. S.] Recorder of Owen County.

STATE OF INDIANA, } ss.
COUNTY OF PUTNAM, }

The foregoing instrument was filed for record in the recorder's office of Putnam County, on the 14th day of January, A. D. 1886, at eleven o'clock in the afternoon of that day, and duly recorded in Book Eight of Mortgages on page.

DANIEL MALLONEY,
[L. S.] Recorder of Putnam County.

STATE OF INDIANA, } ss.
COUNTY OF MONTGOMERY. }

The foregoing instrument was filed for record in the recorder's office of Montgomery County, on the 14th day of January, A. D. 1886, at eleven o'clock in the forenoon of the day, and duly recorded in Book Twenty-five of Mortgages on page.

JOHN JOHNSON,
[L. S.] Recorder of Montgomery County.

STATE OF INDIANA, } ss.
COUNTY OF TIPPECANOE. }

The foregoing instrument was filed for record in the record-
131 er's office of Tippecanoe County, on the 18th day of January, A. D. 1886, at eight o'clock in the forenoon of that day, and duly recorded in Book Thirty-seven of Mortgages on page 168 and following.

DAVID BRYAN.
(L. S.) Recorder of Tippecanoe County.
HENRY L. BRAYN,
Deputy.

STATE OF INDIANA, } ss.
COUNTY OF WHITE. }

The foregoing instrument was filed for record in the record-

Exhibit to same

er's office of White County, on the 13th day of January, A. D. 1886, at ten o'clock in the forenoon of that day, and duly recorded in Book Twenty-five of Mortgages on page 194 and following.

JAMES P. SIMONS,
[L. S.] Recorder of White County.

STATE OF INDIANA, } ss.
COUNTY OF PULASKI. }

The foregoing instrument was filed for record in the recorder's office of Pulaski County, on the 15th day of January, A. D. 1886, at forty minutes past three o'clock in the afternoon of that day, and duly recorded in Book P of Mortgages on page 191 and following.

J. M. STEIS,
[L. S.] Recorder of Pulaski County.

STATE OF INDIANA, } ss.
COUNTY OF STARK. }

The foregoing instrument was filed for record in the record-
132 er's office of Stark County, on the 16th day of January, A. D. 1886, at twenty minutes past eleven o'clock in the forenoon of that day, and duly recorded in Book H of Mortgages on page 350 and following.

JACOB BOZARTCH,
[L. S.] Recorder of Stark County.

STATE OF INDIANA, } ss.
COUNTY OF LAPORTE. }

The foregoing instrument was filed for record in the recorder's office of Laporte County, on the 18th day of January, A. D 1886, at five o'clock in the afternoon of that day, and duly recorded in Book 18 of Mortgages on page 348 and following.

D. J. MCMURRY,
[L. S.] Recorder of Laporte County.

STATE OF INDIANA, }
COUNTY OF MARION. }

The foregoing instrument was filed for record in the record-

er's office of Marion County, on the 13th day of January, A. D. 1886, at five o'clock in the afternoon of that day, and duly recorded in Book 143 of Mortgages on page....

Exhibit to

WILLIAM F. KEAY,
Recorder of Marion County.

[L. S.]

STATE OF INDIANA, } ss.
COUNTY OF HAMILTON. }

The foregoing instrument was filed for record in the recorder's office of Hamilton County, on the 13th day of January, A. D. 1886, at nine o'clock in the forenoon of that day, and duly recorded in Book Q of Mortgages on page 189 and following.

J. P. WHEELER,
Recorder of Hamilton County.

[L. S.]

STATE OF INDIANA, } ss.
COUNTY OF BOON. }

133 The foregoing instrument was filed for record in the recorder's office of Boone County, on the 13th day of January, A. D. 1886, at fifty-seven minutes past one o'clock in the afternoon of that day, and duly recorded in Book Twenty-four of Mortgages on page 100 and following.

DAVID W. CAMPBELL,
Recorder of Boone County.

[L. S.]

STATE OF INDIANA, } ss.
COUNTY OF CLINTON. }

The foregoing instrument was filed for record in the recorder's office of Clinton County, on the 13th day of January, A. D. 1886, at fifty minutes past two o'clock in the afternoon of that day, and duly recorded in Book Eighty-seven of Mortgages on page 5.

F. A. HEDGCOCK,
Recorder of Clinton County.

[L. S.]

STATE OF INDIANA. } ss.
COUNTY OF CARROLL. }

The foregoing instrument was filed for record in the record-

hibit to same er's office of Carroll County, on the 13th day of January, A. D. 1886, at twenty minutes past ten o'clock in the forenoon of that day, and duly recorded in Book One of Mortgages on page 154.

[L. S.] GEO. W. BEALE.
134 Recorder of Carroll County.

STATE OF INDIANA, }
COUNTY OF JASPER. }

The foregoing instrument was filed for record in the recorder's office of Jasper County, on the 12th day of January, A. D. 1886, at fifteen minutes past eleven o'clock in the forenoon of that day, and duly recorded in Book Fifteen of Mortgages on page 162.

THOMAS ANTRIM,
[L. S.] Recorder of Jasper County.

STATE OF INDIANA, }
COUNTY OF NEWTON. }

The foregoing instrument was filed for record in the recorder's office of Newton County, on the 14th day of January, A. D. 1886, at fifty minutes past four o'clock in the afternoon of that day, and duly recorded in Book No. 19 of Mortgages on page 26 and following.

ELISHA PARSONS,
[L. S.] Recorder of Newton County.

STATE OF INDIANA, }
COUNTY OF LAKE. } ss.

The foregoing instrument was filed for record in the recorder's office of Lake County, on the 13th day of January, A. D. 1886, at ten o'clock and ten minutes in the forenoon of that day, and duly recorded in Book Seventeen of Mortgages on page 1 and following.

[L. S.] EDWARD P. AMES.
135 Recorder of Lake County.

STATE OF INDIANA. }
COUNTY OF JEFFERSON. } ss.

The foregoing instrument was filed for record in the record-

er's office of Jefferson County, on the 15th day of January, A. D. 1886, at thirty minutes past nine o'clock in the forenoon of that day, and duly recorded in Book 288 of Mortgages on page 248 and following. Exhibit B to sam

GEO. K. WEBB,
[L. S.] Recorder of Jefferson County.

EXHIBIT B.

Memorandum of Agreement, made and entered into this 18th day of May, 1886, by and between the Louisville, New Albany & Chicago Railway Company, hereinafter called the Railway Company, a corporation duly organized and existing under the laws of the States of Indiana and Kentucky, party of the first part, and the Farmers' Loan and Trust Company, a corporation duly organized and existing under the laws of the State of New York, and John H. Barker, of Michigan City, in the State of Indiana, trustees, and hereinafter called the Trustees, parties of the second part.

Whereas, on the first day of January, 1886, the parties hereto made and entered into a certain indenture of mortgage, hereinafter called the Consolidated Mortgage, wherein and whereby the Railway Company conveyed to the Trustees its railroads, franchises and other property connected with and appertaining to such 136 railroads by way of mortgage, to secure the payment of the principal and interest of $10,000,000 of bonds, to be made and issued by the Railway Company, which bonds are hereinafter styled the Consolidated Bonds.

And whereas, the Railway Company owns certain shares of the capital stock of the Chicago & Western Indiana Railroad Company, and of the Belt Railway Company of Chicago, and certain shares of the capital stock of the Bedford & Bloomfield Company, and contemplates acquiring stocks and bonds of branch roads, railroads and extensions by use of the proceeds of said consolidated bonds, or some of them.

And whereas, at a meeting of the Board of Directors of the Railway Company, duly and legally called and convened, the said board being fully authorized by law so to do, did resolve, in substance and effect, for the purpose of creating additional security

Exhibit B to same.

for the payment of the principal and interest of all of the said bonds, that the Railway Company should execute and deliver to the trustees a collateral trust agreement, binding the said company to deposit and pledge with the said Farmers' Loan and Trust Company as additional security for the said $10,000,000 of consolidated bonds, the stocks and bonds hereinbefore described, reserving, however, from such deposit and pledge, such amounts of stock as it might be necessary to keep outstanding in different hands for the purpose of maintaining the organization of any of the companies the stock of which is deposited.

Now therefore, this agreement witnesseth, that the Louisville,
137 New Albany & Chicago Railway Company, party of the first part, in consideration of the premises and of one dollar to it in hand paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the parties of the second part forever released and discharged therefrom, doth covenant and agree that it will, as soon as may be practicable, deposit and pledge with the said Farmers' Loan and Trust Company:

1. The ten thousand (10,000) shares of the capital stock of the Chicago & Western Indiana Railroad Company, now owned by the party of the first part.

2. The four hundred (400) shares of the capital stock of the Belt Railway Company of Chicago, now owned by the party of the first part.

3. The twelve thousand (12,000) shares of the capital stock of the Bedford & Bloomfield Company, now owned by the party of the first part.

4. Any and all other stocks or bonds of branch roads, railroads or extensions, which may be hereafter acquired by the Railway Company by use of any of the said consolidated bonds or the proceeds thereof, reserving and retaining, however, from such deposit and pledge in respect of each company the stock of which is deposited and pledged, such amount of stock as it may be necessary to keep outstanding in different hands for the purpose of maintaining the organization of such company.

And the Railway Company doth further hereby covenant and
138 agree, that for the purpose of giving effect to such deposit and pledge, and to carry out the intent and object of this agreement,

it will, at or prior to the deposit and pledge herein contemplated, execute full and sufficient instruments, or cause to be executed by the person or persons in whose names the stocks and bonds, which are to be deposited and pledged as aforesaid, may stand, full and sufficient instruments of assignment and transfer of said stock and bonds to the said Farmers' Loan and Trust Company trustee, which instruments of assignment and transfer shall also severally contain a power of attorney, fully authorizing the Farmers' Loan and Trust Company to transfer to itself as trustees, on the books of the Company to whose stock or bonds the assignment or transfer relates, the stock or bonds covered by such instrument of assignment or transfer. Exhibit B

It is further hereby mutually covenanted and agreed, that the stocks and bonds which shall be deposited and pledged as herein provided, shall be held by the Farmers' Loan and Trust Company, trustee, and its successor or successors in trust, for the uses and purposes herein expressed, that is to say:

First. To secure the payment of the principal and interest of all the said consolidated bonds, and for the use and benefit of the person or persons, firm or firms, body or bodies politic or corporate, who shall at any time become purchasers or holders, owners, or bearers, of either or any of the said bonds, and subject to the terms, provisions and stipulations in the said bonds contained.

Second. Until default shall be made in the payment of the
139 principal or interest secured by said consolidated bonds, or some of them, the voting power appertaining to the stocks and bonds which shall be deposited and pledged as herein provided, as herein provided, shall be exercised in such manner as the Railway Company shall prescribe in writing, and all dividends and interest which shall be paid on such stocks and bonds shall be paid on such stocks and bonds shall be paid on such stocks and bonds shall be paid to the Railway Company, to be enjoyed and applied by it as a portion of its revenue.

Third. In case a default in the payment of interest on any of said consolidated bonds shall be made, and shall continue for the space of six months, then, in that event, the stocks and bonds which shall be deposited and pledged as herein provided, shall be deemed to be part and parcel of the property described in and intended to be covered by the said consolidated mortgage of January 1st, 1886, and all provisions of said mortgage which apply in such case of de-

Exhibit B to same.

fault to the property therein described and referred to shall apply to the stocks and bonds which shall be deposited and pledged as aforesaid.

Fourth. Except as herein otherwise expressly provided, the rights, duties and liabilities of the parties hereto and of the holders of said consolidated bonds with reference to the stocks and bonds, which shall be deposited and pledged as herein provided shall be the same as is provided in said consolidated mortgage of January 1st, 1886, with reference to the property covered by said
140 mortgage, and at any time before default the railway company may exercise the right to sell, lease or otherwise dispose of said stocks and bonds which is defined in the ninth subdivision of the Habendum clause of said consolidated mortgage, subject to the conditions and restrictions therein expressed.

In testimony whereof, the corporations, parties hereto, have caused their respective corporate seals to be hereto affixed and the same to be duly attested, and the said John H. Barker has hereunto set his hand and seal the day and year first above written.

(Signed) LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY,
By WM. DOWD,
President.

Attest:
WM. DULLES, JR.,
[SEAL] Assistant Secretary.

THE FARMERS' LOAN AND TRUST COMPANY,
(Signed) By R. G. ROLSTON,
President.

Attest:
WM. H. LEUPP,
[SEAL] Sec'y.

(Signed) JOHN H. BARKER. (Seal)

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK. } ss.

Be it remembered. that on this 18th day of May, A. D. 1886, before me, a Commissioner of Deeds for the States of Indiana, Kentucky and Illinois, residing in said State. city and county aforesaid, personally appeared William Dowd, President of the Louisville, New Albany and Chicago Railroad

Company, personally known to me to be the President of said Exhibit B to same.
141 company, and personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he in behalf of said Railway Company, and by authority of its Board of Directors, had signed and delivered the said instrument, as the free and voluntary act of the said Railway Company, for the uses and purposes therein set forth; also personally appeared before me at the same time, William Dulles, Jr., assistant secretary of the said Railway Company, personally known to me to be such assistant secretary, and personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he, on behalf of said Railway Company, and by like authority had signed the said instrument, and affixed thereto the official corporate seal of said Railway Company, as the free and voluntary act of the said Louisville, New Albany and Chicago Railway Company, for the uses and purposes therein set forth; that he knew the corporate seal of said company, and that the seal so affixed, is said company, and that the seal so affixed, is said corporate seal.

And also at the same time before me personally came Roswell G. Rolston, president of the Farmers' Loan and Trust Company, and personally known to me to be the president of said company, and personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he, in behalf of said Trust Company, and by authority of its Board of Directors, had signed and delivered the said instrument as the free and voluntary act of the said Trust Company, for the uses and purposes therein set forth; also personally appeared before me at the same time, William H. Leupp, secretary of the said Trust
142 Company, personally known to me to be the secretary of said company, and personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he, on behalf of said Trust Company, and by like authority had signed the said instrument, and affixed thereto the official seal of said Trust Company, as the free and voluntary act of the said Farmers' Loan and Trust Company for the uses and purposes therein set forth; that he knew the corporate seal of said company, and that the seal so affixed is said corporate seal.

And I further certify that this instrument of writing from the Louisville, New Albany and Chicago Railroad Company to the Farmers' Loan and Trust Company and John H. Barker, trustees, was at the time and place first above mentioned produced to me by

Exhibit B to same.

the president and secretary of the said Railway Company and acknowledged as aforesaid.

In witness whereof, I have hereunto set my hand and affixed my official seal this 18th day of May, 1886.

CHARLES NETTLETON,
[SEAL] Commissioner for Indiana in New York.
CHARLES NETTLETON,
[SEAL] Commissioner for Kentucky in New York.
CHARLES NETTLETON,
[SEAL] Commissioner for Illinois in New York.

STATE OF INDIANA, } ss.
COUNTY OF LAPORTE. }

Be it remembered, that on the 4th day of June, A. D. 1886, before me, Jared H. Orr, Notary Public, duly commissioned
143 and qualified, personally appeared John H. Barker to me personally known to be the real individual described in, and who executed the forgoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

Witness my hand and official seal at Michigan City, Ind., this 4th day of June, A. D. 1886.

JARED H. ORR,
[SEAL] Notary Public.

And now come the defendants the Central Trust Company of New York, and James Murdock, by Butler, Notman, Joline & Mynderse, their solicitors, and enter their appearance herein.

And afterwards at the same time, on said 12 day of November, 1896, before Honorable William A. Woods, judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

And now, on this 12th day of November, 1896, come the parties hereto, and thereupon, upon consent of the solicitors for the several parties, it is

Order consolidating several causes.

Ordered, that the above entitled cause be and the same is hereby consolidated with the suit now pending in this court, wherein Central Trust Company of New York and John H. Stotsenburg are complainants, and Louisville, New Albany & Chicago Railway Company and others are defendants, and also with the suit now pending in this court wherein the Farmers' Loan and Trust Company and John H. Barker are complainants, and said Louisville, New Albany & Chicago Railway Company and others are defendants, the same to proceed under the title of Farmers' Loan and Trust Co. of New York and John H. Barker, complainants,
144 against Louisville, New Albany and Chicago Railway Company.

And at the same time, on said 12th day of November, 1896, before Honorable William A. Woods, judge of said court, the following further proceedings in cause No. 9400 were had, to-wit:

And now, on this 12th day of November, 1896, come the parties hereto, and thereupon, upon consent of the solicitors for the several parties, it is

Ordered, that the above entitled cause be, and the same is hereby consolidated with the suit now pending in this court, wherein John T. Mills, Jr., is complainant, and Louisville, New Albany & Chicago Railway Company is defendant, and also with the suit now pending in this court wherein the Farmers' Loan and Trust Company and John H. Barker are complainants, and said Louisville, New Albany & Chicago Railway Company and others are defendants, the same to proceed under the title of Farmers' Loan and Trust Company of New York and John H. Barker, complainants, against Louisville, New Albany and Chicago Railway Company, and others.

145 And at the same time, on said 12th day of November, 1896, before the Honorable William A. Woods, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit: Upon reading and filing the verified bill of complaint herein, and on motion of Turner, McClure & Rolston, counsel for

the complainants, and Butler, Notman, Joline and Mynderse, appearing for the Central Trust Company of New York and Murdock and Stotsenburg; and G. W. Kretzenger appearing for the defendant, the Louisville, New Albany & Chicago Railway Company; and E. C. Field for W. H. McDoel, Receiver, and due deliberation having been had,

Order extending appointment of receiver to consolidated causes.

It is ordered, adjudged and decreed, that William H. McDoel who has heretofore in the suit of John T. Mills, Jr., against the Louisville, New Albany and Chicago Railway Company been appointed receiver for the said defendant, the Louisville, New Albany and Chicago Railway Company, be and he is hereby appointed such receiver in the above entitled cause of the said defendant, the Louisville, New Albany and Chicago Railway Company, and of the property of said defendant as set forth in the order appointing him, as made in said cause and entered on the 24th day of August, 1896, to which reference is hereby made, with all the rights, powers and privileges as in said order set forth, and said receivership is hereby extended to this cause.

146 And it is further ordered, that said cause of John T. Mills, Jr., against the Louisville, New Albany and Chicago Railway Company and a certain other cause now pending in this court wherein the Central Trust Company of New York and another are complainants, and the defendants herein, The Louisville, New Albany & Chicago Railway Company and others are defendants, be and the same are hereby consolidated with this cause, and the orders and proceedings had therein are hereby made the orders and proceedings in this cause, the consolidated cause as above recited and set forth.

And afterwards, to-wit: at the November term of said court on the 24 day of November, 1896, before the Honorable William A. Woods, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Petition of Receiver for new bridges, &c.

Now comes William H. McDoel, Receiver, appointed in the above entitled cause and presents his petition praying for an order to construct new bridges; to repair freight cars and engines; to ballast and make new alignment of track, and to equip engines and cars with air brakes and automatic couplers; and after reading said petition and being duly advised, it is

Order on same

Ordered that said receiver be and he is hereby authorized, upon the conditions herein after mentioned, to change the alignment of said railroad north of Lowell; also to reduce the grade north of Cedar Lake from fifty-three (53) feet to twenty-six (26) feet per mile for a distance of one and three-fourths miles; and to reduce the grades at different points between Lowell and Indianapolis, Indiana, on said line of railroad where the same may
147 be found necessary for the economical management of said railroad and to complete the ballasting of said railroad between Hammond and Indianapolis, Indiana; and to complete the ballasting of said road between Campbellsburg and New Albany, Indiana, the uncompleted portion being about twenty-seven (27) miles; also to complete the ballasting on said road between Campbellsburg and Lafayette, Indiana, the uncompleted portion thereof being about seventy-five (75) miles.

And said receiver is further ordered and directed upon the conditions following, to construct seven (7) new bridges, as prayed in said petition; and also to make necessary repairs on freight cars and engines therein described; and to equip the cars on said road with New York air brakes and automatic couplers under the terms and conditions of the contract set forth in said petition, which he is authorized to ratify and affirm, and in compliance with the Act of Congress requiring said appliances to be completed on or before the first day of January, 1898.

And it appearing to the court that said improvements cannot be made and the expense thereof met, out of the present earnings of said road, and it further appearing that the receiver can borrow two hundred thousand dollars ($200,000) on his note or notes as such receiver for the purpose of prosecuting said work, and that said sum will be sufficient to carry on said work for the present in the most economical manner, and that said money can be borrowed without interfering with or affecting the existing liens under the different trust deeds upon the corpus of said railroad secur-
148 ing bonds issued thereunder, and without interfering or affecting existing liens of any other character or kind.

rder on same. It is therefore ordered that the receiver be and he is hereby authorized to borrow two hundred thousand dollars ($200,000) on his note as such receiver, at a rate of interest not exceeding six per cent. and providing therein that the same shall be paid out of the future earnings of the road, and providing also that such loans in no manner interfere with or effect existing liens upon the corpus of the railroad, and upon obtaining said money as herein provided, said receiver is authorized to exercise his discretion in the time and manner of prosecuting said work and the expenditure of said amount of two hundred thousand dollars ($200,000) thereof.

Said petition is in the words following, to-wit:

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

149 Before Honorable WILLIAM A. WOODS, Judge:

The Farmers' Loan and Trust Company, et al., vs. Louisville, New Albany & Chicago Railway Company, et al. } In Chancery. No.

etition. William H. McDoel, receiver in the above entitled cause, represents to the court that there are four distinctive classes of improvements and betterments upon the property requiring the expenditure of a large sum of money; namely:

1. The Construction of New Bridges.

2. The Repair of Freight Cars and Engines.

3. Ballasting and Making New Alignment of Track.

4. The Equipment of Engines and Cars with Air Brakes and Automatic Couplers.

Construction of New Bridges.

Your petitioner represents that it is necessary to build seven (7) new bridges on the line of said road, to-wit:

One new deck truss bridge over Racoon Creek, one-half

mile south of Ladoga. The present bridge is a Howe Truss, 127 feet in length and was built in 1878, and said deck truss bridge will cost approximately $5,000. Petition.

150 One bridge of two deck steel girder spans, with one centre pier over Deer Creek, one half mile south of Putnamville; that the present bridge is a Howe Truss and is 117 feet in length and was built in 1876; that the cost of building said new bridge is approximately $4,660.00.

One steel plate girder bridge, fifty-five feet in length over Jack's Defeat Creek at Stinesville; that the present bridge is a Howe Truss and was built in 1876; that the approximate cost of said new bridge is $1,625.00.

One through steel pin connected truss bridge, over North Salt Creek, and

One bridge of like character over South Salt Creek, situate just north of Bedford; that the present bridges over said creeks are Howe Truss bridges and were built in 1878; that said two bridges will cost approximately $18,820.

One lattice girder bridge, one hundred and six feet in length over Blue River, one half mile south of Pekin; that the present bridge is a Howe Truss and was built in 1879; that the said new bridge will cost approximately $4,010.

One lattice girder bridge, 103 feet in length over Muddy Fork Creek near Bridgeport; that the present bridge over said creek is a Howe Truss and was built in 1878; that the new bridge will cost approximately $3,905.

Repair of Freight Cars and Engines.

Your receiver further represents that he has between 500 and 600 freight cars now out of service on account of their bad
151 condition; that it is not safe to use them in their present condition and that it is necessary before using them that they be put in the shops and overhauled and repaired, and that the probable expense of putting them in roadworthy condition will be forty-three thousand seven hundred and twenty dollars ($43,720); that when so repaired they will be valuable to said road and their use will be

Petition. a necessity in transporting the spring and summer business of 1897 and that without them it will be impossible to do business which will then be offered.

Your petitioner further represents that there are a large number of engines needing heavy repairs, and when repaired they will make efficient and desirable engines capable of doing the work of new engines and that the use of all of these engines will be necessary to transact the business of said road as early as the spring of 1897; that the probable expense of putting them in roadworthy condition will be fifty thousand dollars ($50,000); that your receiver has valuable machine shops recently constructed at La Fayette, Indiana, and well equipped with modern machinery and appliances for doing all of said desired work and that the expense of repairing them will be greatly reduced if the work thereon can be prosecuted from now until the spring of 1897.

Ballasting and Making New Alignment of Track.

Your receiver further represents that north of Lowell, in Lake County, Indiana, there is a very bad alignment of track, consisting of four very bad curves, and all within a limit of three-fourths of a mile; that on account thereof large expense is involved in
152 maintaining said track and the running of trains over the same is constantly delayed and thereby the expense of operation is greatly increased, and your receiver further represents that along the above described part of said line of railroad there are also three pile bridges, aggregating two hundred and eighty-two feet in length, which should be taken out and in the opinion of your receiver the same can be taken out and the water way changed without damage to any one and without interfering with the free flow of the water therein and a solid grade substituted in place of said pile bridges; that the approximate cost of making a proper and safe alignment of said track and the removal of said pile bridges and the construction of a new solid enbankment of earth in place thereof will be seven thousand one hundred and twenty-seven and 50/100 dollars ($7,127.50).

And your receiver further represents that north of Cedar Lake it is necessary to change the line and reduce the grade from 53 feet to 26 feet per mile, for the distance of one and three-fourths miles and that the approximate cost of such work will be $16,975, and that from Lowell, Indiana, to Indianapolis, Indiana, it is necessary to reduce the grades at different points and make changes in the

alignment, which would cost approximately fifty thousand dollars ($50,000). Petition.

And your receiver further represents that the line of railroad between Hammond and Indianapolis has never been but partially ballasted; that before the receivership herein a large amount of ballast work on said line was contemplated and since your receiver's appointment a considerable amount of ballasting has been done, that it is necessary that said ballasting on said line be prosecuted to
153 completion at as early a date as possible; that on said line the competition with other lines of railroad between Chicago, Indianapolis and Cincinnati, makes it absolutely necessary to run the passenger trains on said line between said competing points at a high rate of speed and the effect thereof is to cause the rails to become surface bent, and if continued to be used in the present condition of the track will ultimately require the re-rolling of the rails or replacement with new ones; that if the roadbed is properly ballasted the track will be made safe for business and the present rails thereon will constitute a perfectly safe and roadworthy track, and that the estimated cost thereof is fifty thousand dollars ($50,000).

Your receiver further represents that the railroad company in 1895 established a stone crushing machine and plant at Salem, Indiana, at a very large expense, for the purpose of crushing stone for ballast; that said plant is in good order and capable of crushing fifty car loads per day; that at said place the stone is especially adapted for ballast and said company prior to your receiver's appointment ballasted about eighteen miles of track with crushed stone; that the intention of said company was to ballast said track from Campbellsburg to New Albany, a distance of forty-five miles, of which distance the eighteen miles above referred to forms a part; that said portion of the track between said places has never been ballasted and is in such a condition now that the ballasting thereof is necessary to the safe and economical management of said property; that it will require an expenditure of about thirty thousand dollars ($30,000) to complete said ballasting between said
154 places; that from Campbellsburg to La Fayette, a distance of
152 miles, parts thereof at different places between said points have not been ballasted and that the distance between said places actually requiring ballast is 75 miles, and that the approximate cost of ballasting the same will be forty-five thousand dollars ($45,000).

etition. Equipment of Engines and Cars with Air Brakes and Automatic Couplers.

Your receiver further prays for instructions and proper orders for his guidance in the matter of affirming a contract made and entered into by and between the Louisville, New Albany & Chicago Railway Company, prior to his appointment as receiver, and the New York Air Brake Company, a corporation of New Jersey, for the equipment of its cars and engines with air brakes in conformity to the act of Congress approved March 2, 1893, and for a proper order affirming a contract also entered into with the Trojan Car Coupler Company for the equipment of its cars and engines with automatic couplers in conformity with said act of Congress.

Your petitioner represents that said Railway Company was and is engaged in handling interstate business, with its cars, engines and equipment, and that it will be necessary to equip the following number of cars and engines with automatic couplers and air brakes so as to conform to said act of Congress and to avoid the penalties provided for violation thereof; to-wit: 4500 cars with 155 air brakes and automatic couplers; 25 engines with air brakes; 76 engines with automatic couplers and 79 passenger cars with automatic couplers; that the approximate cost of such appliances, including material, labor and freight will be three hundred and twenty-five thousand dollars.

Your petitioner represents that prior to his appointment as such receiver and while acting as vice-president and general manager of said company, he made and concluded a contract with the New York Air Brake Company, a corporation of New Jersey, for the purchase of the necessary automatic air brakes for said engines and cars.

Your petitioner represents that he carefully investigated other air brakes and the prices thereof, and that the prices at which the same are obtainable under this contract are lower in the aggregate by fifty thousand dollars than the same could be obtained from the Westinghouse Air Brake Company and much below the price that could now be obtained from said New York Air Brake Company but for said contract; that the officers representing the mechanical department of said railway have carefully investigated said air brake and report the same to your receiver as practical and efficient; that before making said contract your receiver ascertained that two thousand five hundred of said New York Air Brakes were

in use on the Missouri, Kansas and Texas Railway and that all of Petition
the equipment of the Great Northern Railway is supplied with said brake, and the officials of said railways advise your receiver that the said air brake gives good and satisfactory service; that it is represented by said New York Air Brake Company to your receiver that said company holds valid patents for said air brake and
that it has not in any manner infringed upon the patent of the
156 Westinghouse Air Brake Company or that of any other company. But your receiver represents that there is litigation between the Westinghouse Air Brake Company and said New York Air Brake Company now pending in one of the United States courts in New York, in which it is claimed by said Westinghouse Company that the air brake of said New York Air Brake Company is an infringement on their patent, and your petitioner represents that said New York Air Brake Company is willing to give a bond of indemnity against loss or damages arising out of said suit or any other suit pending or which may be brought involving the validity of said patent, and your receiver herewith presents for the inspection of the court said indemnity bond and prays the advice and order of the court as to whether he shall carry out said contract and equip the cars and engines of said railway with said air brake, in accordance therewith and in case the court approves said contract that an order may be made affirming the same; that the approximate cost of equipping the cars and engines of said road with said New York air brake will be two hundred and fifty thousand dollars.

Your petitioner further represents that while he was the vice-president and general manager of said company and before his appointment as receiver herein he had entered into a contract with the Trojan Car Coupler Company, for the purchase of automatic couplers; that under said contract said Trojan Car Coupler Company agreed to furnish automatic couplers at $15 per car, which is a very low rate for said appliance; that the provisions of
said act of Congress applying to said equipment as your peti-
157 tioner is advised, are sections one, two, three and six, appearing in the supplement of the Revised Statutes of the United States, Vol. 2, page 102, and under the terms thereof the said equipment must be supplied with said air brakes and automatic couplers on or before the first day of January, 1898, and your receiver represents that when said cars are so equipped, according to the provisions of said act of Congress that there will be a great saving of life and limb among the employes, and that the same will very largely reduce the cost and expense incurred under the pres-

tition. ent method of operating trains by hand brakes and hand couplers and will therefore be in the interest of all the bondholders, stockholders and lienholders of every description.

Your receiver therefore prays:

First: That an order may be made directing and ordering him to construct said new bridges:

Second: To make the necessary repairs on engines and cars:

Third: To make the new alignment and prosecute the work of ballasting the track:

Fourth: That he be directed to affirm and ratify the contracts for the equipment of cars and engines with air brakes and automatic couplers:

And your receiver represents that the present earnings of said road after the payment of operating expenses, fixed charges, etc., will not be sufficient to meet the proposed expense or any part thereof, and that it will be necessary to borrow the money for said purposes; that it will not be necessary to expend more than
158 two hundred thousand dollars ($200,000) at present for the reason that a great part of said work cannot be economically done during the winter months, but to the extent that said work or part thereof can be done with economy asks that the same be authorized, and to this end the receiver prays to be permitted to exercise his discretion in the time and manner of prosecuting said work and the expenditure of the said amount of two hundred thousand dollars therefor.

And your receiver represents that he can borrow said amount of two hundred thousand dollars by executing his note or notes as receiver, with interest not to exceed six per centum per annum, and providing therein that the same shall be paid out of the future earnings of the road, and asks that the order of the court authorizing said loan shall provide that the said money so borrowed on such notes shall not interfere with or affect the existing liens under the different trust deeds securing bonds upon the corpus of said railroad; and your receiver represents that it is necessary in his judgment that all of said work and improvements should be done and made for the safe and economical management of said property

and for the best interest of all persons holding securities upon said property. Petition.

WM. H. MCDOEL,
Receiverof the Louisville, New Albany
& Chicago RailwayCompany.

E. C. FIELD.
Attorney foi Receiver.

159 And afterwards, to-wit: at the November term of said court, on the 11th day of December, 1896, before the Honorable William A. Woods, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now Floyd A. Woods, and enters his appearance herein as solicitor for the Central Trust Company of New York.

And afterwards, to-wit: at the November term of said court, on the 14th day of December, 1896, before the Honorable William A. Woods, Judge of said court, the following proceedings in cause No. 9,416 were had, to-wit:

Come now the complainants, by Butler, Notman, Joline & Mynderse and Floyd A. Woods, their solicitors, and file their bill of complaint herein in the words following, to-wit:

To the Honorable the Judges of the Circuit Court of the United States for the District of Indiana, Sitting in Equity:

160 Central Trust Company of New York, a corporation created and existing under the laws of the State of New York, and a resident and citizen of the State of New York, and James Murdock, a resident and citizen of the State of Indiana, bring this their bill of complaint against the Louisville, New Albany and Chicago Railway Company, a corporation created and existing under the laws of the State of Indiana, and a resident and citizen of the State of Indiana, and an inhabitant of the District of Indiana, and thereupon your orators complain and say: Bill of Complaint of Cent. Trust Co. and Murdock.

I. On and prior to the 1st day of September, 1894, the Louisville, New Albany and Chicago Railway Company (hereinafter styled the New Albany Company) was and it still is a corporation duly created and existing under the laws of the State of

Bill of Complaint of Cent. Trust Co. and Murdock.

Indiana, and was and is fully authorized to construct, equip, own, maintain and operate the lines of railway herinafter mentioned, and to execute and deliver the bonds and mortgage hereinafter mentioned.

II. Your orator Central Trust Company of New York was at the times hereinafter mentioned and now is a corporation created and existing under the laws of the State of New York, and bearing the corporate name of the Central Trust Company of New York, and at all the times hereinafter mentioned it was and now is duly authorized and empowered under the terms of its charter to take and hold in trust the property transferred and conveyed to it in trust as hereinafter stated, and to execute and perform the trusts imposed upon it under and by virtue of the mortgage or deed of trust hereinafter described. Your orator James Murdock is a citizen of the State of Indiana, and resides in Lafayette, in said State of Indiana.

III. On or about the 1st day of September, 1894, said New Albany Company had in its possession and use certain railroad equipment and rolling stock of the original cost of $1,202,234, such equipment consisting of the following five certain parcels, that is to say:

1. 300 box cars, built by the Haskell & Barker Car Company, costing $140,010.

2. 250 flat cars, built by the Haskell & Barker Car Company, costing $96,250.

3. 200 coal cars and 50 stock cars, built by the Haskell & Barker Car Company, costing $102,750.

4. 300 box cars and 250 flat cars, built by Oliver Adams, agent, costing $293,224.

5. 1,000 flat cars, built by the Haskell & Barker Car Company, costing $370,000.

The title to the equipment above mentioned was at the time in the builders thereof, and said New Albany Company desired to acquire the title to the same, said equipment being necessary in the operation of its railroad.

IV. On or about the 1st day of September, 1894, the New Albany Company, in order to provide means to purchase said equipment and to obtain the title thereto, in the lawful exercise of its corporate powers, and due corporate action having first been had, resolved and determined to issue its bonds, to be known as Equipment Five Per Cent. Sinking Fund Mortgage Gold Bonds, aggregating in amount not exceeding $1,000,000 in gold coin
161 of the United States of America, said bonds to be for $1,000 each, payable twenty years from December 1, 1894, unless sooner paid out of the sinking fund to be provided for the payment of the same, or unless said New Albany Company should elect to pay the same before that time, and to bear interest from the 1st day of December, 1894, payable semi-annually, at and after the rate of five per cent. per annum, in like gold coin, on the 1st days of June and December in each and every year. In pursuance of the said resolution and determination, and in the exercise of its lawful corporate powers, said New Albany Company did thereafter make and execute 1,000 bonds of said series, amounting to $1,000,000 of principal par value, by each of which bonds said New Albany Company, for value received, promised to pay to your orator, Central Trust Company of New York, or to the bearer thereof, the sum of $1,000 in gold coin of the United States of the present standard of weight and fineness, at the office or agency of said New Albany Company, in the City of New York, on the 1st day of December, 1914, (unless such bond should be sooner redeemed, as provided in the mortgage hereinafer mentioned), and to pay interest thereon in the meantime from the 1st day of December, 1894, at the rate of five per cent. per annum, payable semi-annually in like gold coin, on the 1st days of June and December in each year, at said office or agency, upon presentation of the coupons thereto annexed, as they severally should become due.

V. On or about said 1st day of September, 1894, said New Albany Company, in pursuance of the resolution and determination above mentioned, and in the due exercise of its corporate powers, and due corporate action having first been had, in order to secure the payment of the principal and interest of the said bonds as the same should respectively become due and payable, according to the tenor and effect of the said bonds and the coupons or interest warrants accompanying the same, made, executed and delivered unto your orators a certain mortgage or deed of trust bearing date on the said 1st day of September, 1894, and therein and thereby granted, bargained, sold, aliened, remised, released,

Bill of Complaint of Cent. Trust Co. and Murdock.

conveyed and confirmed unto your orators, and to the survivor of them, and to their successors and assigns forever, certain railroads and property described in said mortgage as follows (the words "party of the first part" and "Railway Company" in said description being used to designate the New Albany Company):

"All the railway system and property of the said party of the first part, of every kind and nature, and however owned, held, leased or enjoyed, together with all the equipment, appurtenances and franchises, thereunto appertaining, being more particularly described as follows:

All the present line of railway extending from New Albany, Indiana, to Michigan City, in the same State, and also from Indianapolis, Indiana, to a point on the State line between Indiana and Illinois, about twenty miles southeast of the City of Chicago, Illinois, and also its proprietary and owned line of railroad, called the Bedford and Bloomfield Railroad, extending from Bedford to Switz City, in Indiana, and also its other proprietary and owned line of railroad, called the Orleans, West Baden and French Lick Springs Railroad, extending from Orleans to French Lick, Indiana, and also all its lands, station buildings, tracks and terminal facilities in the City of Louisville, Kentucky, and also all its rights, interest, proprietary and leasehold estate and terminal facilities in the franchises, property, tracks and station buildings of the Chicago and Western Indiana Railroad Company, and in
162 the Belt Railway Company of Chicago, in the City of Chicago, or elsewhere in the State of Illinois; and also all its real estate, trackage, leasehold and contract rights and terminal properties, stations, sidings and franchises in the City of Indianapolis, Indiana, and also all its leasehold and contract rights, trackage and terminal facilities vested in the party of the first part by virtue of its certain written contracts with the Jeffersonville, Madison and Indianapolis Railroad Company, the Pennsylvania Company, and the Louisville Bridge Company, whereby the trains and traffic of the said party of the first part are moved and handled between the City of New Albany, Indiana, and the City of Louisville, Kentucky, the before mentioned system of railroads owned by the said party of the first part and exclusive of tracks leased and operated by it, being about five hundred and twelve miles in length, and situate in the Counties of Floyd, Clark, Washington, Orange, Lawrence, Greene, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, La Porte, Marion, Hamilton, Boone, Clinton, Carroll, Jasper, Newton and Lake, in the

State of Indiana, and Cook County, in the State of Illinois. and Jefferson County in the State of Kentucky; including and conveying by these presents all the property of every so. or nature, real, personal and mixed, now owned by said rail. y company for the purposes of and connected with or appertaining to the railroads or railways above mentioned and described, together with all the lands, tracks, lines, rails, bridges, ways, buildings. shops, tanks, piers, wharves, structures, erections, turntables, fences, walls, fixtures, franchises, privileges and rights of the railway company, and also all locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured and unmanufactured materials, coal, wood and supplies of every kind belonging or appertaining to the railway company; also all the tolls, incomes, issues and profits, arising out of the said property and its operation, and all rights to receive and recover the same, also all estate, right, title and interest of the party of the first part in and to any and all real estate belongnig to said party of the first part; also all leasehold lands, with the buildings thereon erected, it being the true intent and meaning of these presents that the said railway company, party of the first part, shall and doth convey to the said trustees all and all manner of franchises of every kind and description, however derived and wherever situate, all and all manner of real estate or interest therein, wherever such real estate may be situate, and all and all manner of personal property, of whatever nature or description the same may be, at the date of these presents owned or possessed by the said railway company, whether within or without the State of Indiana; and also all choses in action of every kind and description, including bills receivable, book accounts, traffic balances, all books of record and all accounts of every kind and description, all papers, maps, inventories and documents in anywise referring or relating to the property or franchises hereby conveyed; and also all franchises and property and all personal rights or interest in any franchises or property of every kind and description, real, personal or mixed, and wherever the same may be situate, that may, at any time, before or after the date of this indenture, be acquired by or for the said railway company, for purposes connected with or appertaining to said railroads or railways, hereby conveyed, all of which it is hereby covenanted shall enure, by way of accretion, to the benefit and advantage of said trustees, and by way of further and better security for the bonds to be issued hereunder; it being intended and here-
163 by expressly covenanted that the lien of this indenture shall embrace and bind all railroads, real and personal property, choses in action, contracts, rights and franchises which the said

of Com-
nt of Cent.
st Co. and
dock.

railway company now owns, as fully and to the same extent as if all such property were specifically described herein and conveyed hereby."

To have and to hold all and singular the above mentioned and described railways, premises and property, rights, franchises and appurtenances; unto your orators, their and each of their successor or successors and assigns forever, in trust, nevertheless, for the equal *pro rata* benefit and security of all the holders of all the said bonds secured by said mortgage or deed of trust, without any preference or priority by reason of priority in time of issue or negotiation thereof, or otherwise, and for the uses and purposes, and upon the trusts, conditions, covenants and agreements, in said mortgage or deed of trust declared and expressed.

In and by said mortgage or deed of trust it was, moreover, expressly provided that, in further consideration of the premises and the mutual covenants and agreements therein set forth, and of one dollar, paid by each party to each of the others, it was thereby expressly agreed by and between the parties thereto that the equipment and rolling stock at any time held or acquired by your orators, or either of them, their and each of their successor or successors, as provided in said mortgage or deed of trust, were and should be charged with the agreements, and were and should be held by your orators upon the trusts and for the uses and purposes in said mortgage declared and expressed.

VI. The said mortgage or deed of trust was authorized, made, executed and delivered in all respects in conformity with law, and was duly recorded in the office of the recorder of Lawrence County, Indiana, September 25, 1894, in Book 19 of Mortgages, at page 187, and was also duly recorded in all the other counties wherein the mortgaged property or any part thereof was or is situated, and in all places wherein said mortgage was or is by law required to be recorded. Your orators duly accepted the trust created in and by said mortgage or deed of trust before the recording of the same as aforesaid. Your orators refer to the said mortgage so recorded, and to a true copy thereof annexed to this bill of complaint as a part thereof, marked "Exhibit A," for a particular statement of the terms and provisions of said mortgage or deed of trust and of the bonds issued thereunder, and your orators pray that said copy of said mortgage or deed of trust marked "Exhibit A" may be taken in all respects as if it had been fully set forth in the body of this bill.

VII. In and by said mortgage or deed of trust it was, among other things, provided that if and whenever the equipment and rolling stock included in and of the parcels hereinbefore described should be transferred to and the title thereto vested in the Central Trust Company of New York, one of your orators, by proper instrument in writing, said trust company should certify and deliver bonds of the issue secured by said mortgage or deed of trust, the principal of which bonds should be equal in amount to the cost of such parcel of equipment and rolling stock, as hereinbefore stated, and that if the bonds remaining in the hands of said trust company at the time when the title to all of said equipment and rolling stock included in all of said parcels hereinbefore described should have been so transferred to it, should not be equal to the cost of the final parcel so transferred to it, said trust
164 company should, as soon as the title to all of said equipment and rolling stock should have been so transferred to it, certify and deliver, as therein provided, all bonds of the issue above mentioned which should still remain in its hands unissued.

Your orators further show that since the execution and delivery of said mortgage or deed of trust all of the equipment and rolling stock included in all of the five parcels hereinbefore described has been transferred to and the title thereto vested in said Central Trust Company of New York by proper instrument in writing, and that said Central Trust Company of New York now holds the title to all of said equipment and rolling stock as trustee of and under said mortgage or deed of trust, and as further security for the bonds issued thereunder and secured thereby.

VIII. The said bonds to the aggregate amount of $1,000,000, so made and executed as aforesaid, were duly authenticated by the endorsement thereon of the certificate of said Central Trust Company of New York, one of your orators, as provided in said bonds and mortgage, and so authenticated, were duly delivered to said New Albany Company when and as the title to said equipment and rolling stock was transferred to and vested in said Central Trust Company, and in all respects in accordance with the provisions of said mortgage or deed of trust, and your orators are informed and believe that 709 of said bonds so issued and delivered, amounting to $709,000 principal par value, have been duly issued, negotiated and sold to divers persons, who have thereby become *bona fide* holders thereof as purchasers of the same for value, and that all of said 709 bonds are now outstanding, and valid and binding obligations of said New Albany Company, and the holders of said bonds

Bill of Complaint of Cent. Trust Co and Murdock.

are numerous, and the names and residences of many of such holders are unknown to your orators. Your orators are informed and believe that 291 of said bonds so issued and delivered, being the remainder of said issue, are still held by said New Albany Company in its treasury, and have never been issued, negotiated or sold by it.

IX. A part of the property covered by said mortgage consists of shares of the capital stock of sundry railroad companies owned by said New Albany Company, and representing certain interests and property rights of said New Albany Company in and to certain lines of railroad. Said shares of stock have been delivered to and deposited with the Farmers' Loan and Trust Company under and by virtue of a certain agreement bearing date May 18, 1886, to which said New Albany Company and said Farmers' Loan and Trust Company and John H. Barker are parties, and which is known as a collateral trust agreement, and under said agreement said shares of stock were deposited with said Farmers' Loan and Trust Company as further security for the bonds issued under and secured by the mortgage to said Farmers' Loan and Trust Company and said John H. Barker, as trustees, bearing date January 1, 1886. The shares of stock, which have been so delivered to, and are now held by said Farmers' Loan and Trust Company, are the following:

(1) Nine thousand nine hundred and ninety-nine shares of the capital stock of the Chicago and Western Indiana Railroad Company, of the par value of $100 each.

(2) Two thousand three hundred and ninety-nine shares of the capital stock of the Belt Railway Company of Chicago, of the par value of $100 each.

165 (3) Eleven thousand nine hundred and ninety shares of the capital stock of the Bedford and Bloomfield Company, of the par value of $50 each.

(4) Two thousand nine hundred and ninety shares of the Orleans, West Baden and French Lick Springs Railway Company, of the par value of $100 each.

Your orators allege that said shares of stock are a part of the property covered by said mortgage made by said New Albany Company to your orators, and form a part of the security given

by and under said mortgage for the payment of said bonds which have been issued thereunder, and that your orators have a lien upon said shares of capital stock as security for the payment of said bonds, subject only to the lien of said Farmers' Loan and Trust Company and said John H. Barker under and by virtue of said mortgage made and executed to said Farmer's Loan and Trust Company and said John H. Barker, as trustees, and under and by virtue of said collateral trust agreement, dated May 18, 1886, and to the lien of a certain mortgage made and executed by said New Albany Company to Central Trust Company of New York, one of your orators herein, and to John H. Stotsenburg, of New Albany, Indiana, bearing date May 1, 1890.

X. The said New Albany Company made default in payment on the 1st day of December, 1896, of the installment of interest due on that day on all of said bonds issued and outstanding as aforesaid, and secured by said mortgage to your orators as aforesaid, and said default still continues. Your orators are informed and believe that demand was duly made on the said New Albany Company for the payment of the said installment of interest due upon said bonds December 1, 1896, as aforesaid, and that such demand was made on or about the day when said installment of interest became due as aforesaid, and that the coupons representing said installment of interest, or many thereof, were duly presented, and payment thereof duly demanded, but that payment of said installment of interest and and of said coupons was refused, and that, neither on said 1st day of December, 1896, nor at any time since, did said New Albany Company have or provide at its office or agency in the City of New York, or elsewhere, any funds with which to pay said installment of interest or any part thereof, and your orators allege that no part of said installment of interest has been paid by said New Albany Company, or by any other person or corporation on its behalf, but that the whole of said installment of interest remains due, owing and unpaid.

XI. In a certain cause brought in the Circuit Court of the United States for the District of Iudiana, wherein John T. Mills, Jr., was complainant, and the Louisville, New Albany and Chicago Railway Company (one of the defendants herein) was defendant, such proceedings were had that on or about the 24th day of August, 1896, one William H. McDoel was appointed receiver of all the railroads and property of every description of the defendant New Albany Company, and thereupon said William H. McDoel, as such receiver, duly entered upon and took possession of all the

Bill of Complaint of Cent. Trust Co. and Murdock.

railroads and property of the defendant New Albany Company, including all the property covered by and embraced in said mortgage to your orators. Thereafter, in a certain suit brought in the Circuit Court of the United States for the Northern District of Illinois, between the same parties, a similar order was made and entered confirming such receivership of said William H. McDoel.

Thereafter, and on or about the 12th day of November, 1896, 166 the Farmers' Loan and Trust Company and John H. Barker brought suit against said Louisville, New Albany and Chicago Railway Company and others in said Circuit Court of the United States for the District of Indiana, and also in said Circuit Court of the United States for the Northern District of Illinois, and Central Trust Company of New York, one of your orators, and John H. Stotsenburg also brought suit against said Louisville, New Albany and Chicago Railway Company and others in each of the courts above mentioned, and thereupon, and on or about said 12th day of November, 1896, said suits brought by said John T. Mills, Jr., and by said Farmers' Loan and Trust Company and John H. Barker, and by said Central Trust Company of New York, and John H. Stotsenburg, in said Circuit Court of the United States for the District of Indiana, were consolidated into one suit under the title of The Farmers' Loan and Trust Company and John H. Barker, complainants, against Louisville, New Albany and Chicago Railway Company and others, defendants, and the receivership of said William H. McDoel was extended to said consolidated cause, and he was appointed receiver therein; and in like manner, on or about said 12th day of November, 1896, said three suits above mentioned pending in said Circuit Court of the United States for the Northern District of Illinois were also duly consolidated into one cause under the title of the Farmers' Loan and Trust Company and John H. Barker, complainants, against Louisville, New Albany and Chicago Railway Company and others, defendants, and the receivership of said William H. McDoel was extended to said last-mentioned consolidated cause, and he was appointed receiver therein. Under and by virtue of the orders of said courts in said suits above mentioned, said William H. McDoel now holds and has in his possession, as receiver of this court, all of the railroads and property of said New Albany Company, and this court, by virtue of such receivership, now has all of said railroads and property in its possession and under its control.

XII. Your orators are informed and believe that the defendant New Albany Company is insolvent and wholly unable to pay

its debts and obligations, and that the property and premises covered by the said mortgage so made to your orators as aforesaid are of a value far less in amount than the amount of the bonds issued thereunder, and that said mortgaged property and premises are and constitute an inadequate security for the payment of the said bonds. Your orators further show that the financial affairs of the defendant New Albany Company are in an embarrassed condition, and your orators as trustees under said mortgage cannot execute or perform the trusts provided in and by said mortgage, or protect the rights of the holders of the bonds thereby secured, without the aid or interposition of this honorable court, sitting in equity, and without a judicial sale of all the mortgaged premises, franchises and appurtenances covered by the said mortgage or deed of trust, and that until such sale can be had and the proceeds thereof distributed it is expedient and necessary that all the said mortgaged property of every nature and description whatsoever, shall be placed in the possession and under the control of a receiver or receivers, to be appointed by this honorable court, with such proper powers and control over the same as to this court shall seem just. Your orators are informed and believe that the said property covered by said mortgage constitutes and forms one railroad system, and that it is for the interest of all parties that it should be sold as an entirety,
and that the value of it in portions and sections is and will be
167 much less that its value as a whole, and that said mortgaged
premises are so situated that the same cannot be sold in separate parcels without great and irreparable loss and sacrifice.

XIII. Your orators further allege that there is due and owing from said defendant New Albany Company to your orators, or the holders of said bonds, the sum of $17,725, with interest from December 1, 1896. Your orators are informed and believe that no proceedings have been had at law or in equity for the collection of the debt secured by said mortgage, or any part thereof, save only this suit.

Your orators, therefore, in view of the premises, seek the aid of this Honorable Court in equity, wherein only adequate relief can be administered in matters of this nature, and prays as follows:

1. That the said mortgage, dated September 1, 1894, may be foreclosed.

2. That the lien of the said mortgage may be decreed and established as a lien upon the railroads and other property covered

Bill of Complaint of Cent. Trust Co. and Murdock.

thereby and hereinbefore mentioned and described, including the shares of capital stock hereinbefore particularly mentioned, and the equipment and rolling stock hereinbefore described, the title to which has been transferred to said Central Trust Company of New York, one of your orators, and that the amount due, and to become due, for principal and interest upon the said bonds outstanding and secured by said mortgage may be ascertained and determined.

3. That in default of the payment of the sum so found due within a time to be limited by the decree of this Honorable Court it may be decreed that the defendants and all persons claiming under them, or either of them, any interest in said mortgage property as aforesaid, subsequent to the lien of said mortgage, be absolutely barred and foreclosed of and from all right or equity of redemption of, in and to said mortgaged premises, or any part thereof, and that the sale of the whole of the mortgaged property and premises be ordered in accordance with law and the practice of this Honorable Court, and that the proceeds may be applied to the expenses of this suit, and to the payment of the amounts found due as aforesaid, and the balance thereof as the court may direct.

4. That a receiver or receivers be appointed to take possession of the railroad, property, estate and franchises of the defendant New Albany Company, and the earnings and proceeds thereof, with power to operate the said railroads and property, and with all such power and authority as may be requisite to preserve the same until the sale thereof, as the same may be decreed and ordered by this Honorable Court, and to secure the earnings of the said railroads and property to the use of the bondholders, and with such other powers and authority as are usually possessed by receivers in like cases, as this court may direct.

5. That the defendant, its officers, directors and all other persons claiming or pretending to claim under them, may be restrained by injunction of this Honorable Court from interfering with or disposing of said mortgaged premises, property and franchises, or any part or parts thereof, or any earnings or proceeds thereof.

168 6. That the defendant herein may answer all and singular the premises, but not under oath, which is hereby expressly waived.

7. That your orators may have such other and further relief

in the premises as the nature and circumstances of the case may require, and to your Honors seem meet. Bill of Complaint of Cent. Trust Co. and Murdock.

May it please your Honors to grant unto your orators not only a writ of injunction, conformable to the prayer of this bill, to be issued to the said Louisville, New Albany and Chicago Railway Company, but also a writ of subpœna, to be directed to the said Louisville, New Albany and Chicago Railway Company, commanding it at a certain time, and under a certain penalty, to be therein specified, to be and appear before this honorable court, then and there to answer the premises, and to abide by the order and decree of the court herein, and that said corporation may appear herein according to law.

CENTRAL TRUST COMPANY OF NEW YORK,
[SEAL] By E. FRANCIS HYDE,
Second Vice-President.

JAMES MURDOCK,
By BUTLER, NOTMAN, JOLINE & MYNDERSE,
His Solicitors.

BUTLER, NOTMAN, JOLINE & MYNDERSE,
Solicitors for Complainants.

ADRIAN H. JOLINE,
Of Counsel.

STATE, CITY AND COUNTY OF NEW YORK, } ss.
SOUTHERN DISTRICT OF NEW YORK. }

E. FRANCIS HYDE, being duly sworn, deposes and says that he is an officer, to wit, the second vice-president of the Central Trust Company of New York, one of the complainants in this suit; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true; that the seal affixed to the said bill of complaint is the corporate seal of said complainant, and was thereunto affixed by due and proper authority.

E. FRANCIS HYDE.

Sworn to before me this 8th day of December, 1896.

LELAND S. STILLMAN,
[SEAL] Notary Public,
Kings County,
Certificate filed in N. Y. Co.

169 EXHIBIT A.

Exhibit B to same.

This indenture, made and entered into this first day of September, one thousand eight hundred and ninety-four, by and between the Louisville, New Albany and Chicago Railway Company, a corporation duly created and existing under the laws of the State of Indiana, party of the first part, and the Central Trust Company of New York, a corporation duly created and existing under the laws of the State of New York, hereinafter called the Trust Company, and James Murdock, of Lafayette, in the State of Indiana, parties of the second part.

Whereas, the party of the first part owns and is operating a system of railroads in the State of Indiana, about five hundred and twelve miles in length, which is composed of a line from New Albany, on the Ohio River, to Michigan City, on Lake Michigan, hereinafter called the Main Line, a line from Indianapolis to a junction with the Chicago and Western Indiana Railroad at a point on the State line between Indiana and Illinois about twenty miles southeast of Chicago hereinafter called the Air Line together with certain proprietary and leasehold interests in the franchises and railroads of the said Chicago and Western Indiana Railroad Company and the Belt Railway Company of Chicago, and in the terminal facilities of the said companies in and near the City of Chicago, Illinois, and all its real estate, buildings, tracks, trackage and terminal rights, facilities and franchises in the other cities above mentioned, and in the City of Louisville, in the State of Kentucky, and between said City of Louisville and the City of New Albany and in the City of Indianapolis, Indiana, and is
170 also the exclusive owner of the Bedford and Bloomfield and the Orleans, West Baden and French Lick Springs Railroads;

And whereas, there are now existing certain liens upon said system of railroads, including a certain mortgage made July 1st, 1880, by the party of the first part to John C. New, of Indianapolis, and Washington C. DePauw, of New Albany, in the State of Indiana, as trustees, and a certain mortgage made August 10th, 1881, by the party of the first part to John C. New, of Indianapolis, as trustee, and a certain mortgage made January 1st, 1886, by the party of the first part to the Farmers' Loan and Trust Company, of the City of New York, and John H. Barker, of Michigan City, as trustees, and a certain mortgage made May 1st, 1890, by the party of the first part to the Central Trust Company

of New York and John H. Stotsenburg of New Albany, as trustees; Exhibit A to same.

And whereas, the Railway Company has in its possession and use certain railroad equipment and rolling stock of the original cost of one million two thousand two hundred and thirty-four dollars: that is to say:

1. Three hundred box cars built by the Haskell & Barker Car Company, costing one hundred and forty thousand and ten dollars.

2. Two hundred and fifty flat cars built by the Haskell & Barker Car Company, costing ninety-six thousand two hundred and fifty dollars.

3. Two hundred coal cars and fifty stock cars, built by the
171 Haskell & Barker Car Company. costing one hundred and two thousand seven hundred and fifty dollars.

4. Three hundred box cars and two hundred and fifty flat cars, built by Oliver Adams, agent, costing two hundred and ninety-three thousand two hundred and twenty-four dollars.

5. One thousand flat cars, built by the Haskell & Barker Car Company,costing three hundred and seventy thousand dollars.

And the title to the equipment above mentioned is at present in the builders thereof, and the railway company desires to acquire the title to the same, said equipment being necessary in the operation of its said railroad.

And whereas, the Railway Company, in the exercise of the powers in that behalf possesed by it under the laws of the State of Indiana, and in order to provide means to purchase said equipment and to obtain the title thereto, and in accordance with resolutions duly adopted by its board of directors and by its stockholders at meetings of said board of directors and of said stockholders, duly and regularly called and held, has determined to issue its bonds to be known as Equipment Five Per Cent. Sinking Fund Mortgage Gold Bonds, aggregating an amount not exceeding one million dollars in gold coin of the United States of America, said bonds to be for one thousand dollars each, payable twenty years from De-

Exhibit A to same.

cember 1, 1894, unless sooner paid out of the sinking fund to be provided for the payment of the same, or unless the Railway Company shall elect to pay the same before that time, and to bear interest from the first day of December, 1894, payable semi-annually at and after the rate of five per cent. per annum in like gold
172 coin on the first days of June and December in each and every year.

And whereas, the said bonds and the interest warrants to be annexed thereto, and the trustees' certificate to be endorsed thereon are to be in the form or substantially the form following, that is to say:

UNITED STATES OF AMERICA,

STATE OF INDIANA.

No.... $1,000.

Louisville, New Albany and Chicago Railway Company.
Equipment Five Per Cent. Sinking Fund Mortgage Gold Bond.
Issue limited to $1,000,000.

The Louisville, New Albany and Chicago Railway Company, a corporation of the State of Indiana, for value received, hereby promises to pay to the Central Trust Company of New York, or to bearer hereof, the sum of one thousand dollars in gold coin of the United States of the present standard of weight and fineness, at the office or agency of the said Railway Company in the City of New York, on the first day of December, in the year one thousand nine hundred and fourteen (unless this bond be sooner redeemed as provided in the mortgage hereinafter mentioned), and to pay interest thereon in the meantime from the first day of December, one thousand eight hundred and ninety-four, at the rate of five per cent. per annum, payable semi-annually in like gold coin on the first days of June and December in each year at said office or agency upon presentation of the coupons hereto annexed as they severally become due. The principal and interest of this bond is payable without relief from valuation or appraisement laws. This bond is one of a series of bonds of like tenor and
173 effect numbered consecutively from one upwards and secured by indenture of mortgage or deed of trust to the Central Trust Company of New York, and James Murdock, of Indiana, as trustees, dated Setember 1, 1894, covering the equipment proposed to be acquired by means of the proceeds of said bonds as provided in said mortgage or deed of trust, and also, all the other property of

said Railway Company, as specified and described in said mortgage or deed of trust. Exhibit A to sa

This bond may at any time upon production thereof to said Railway Company and proper endorsement being made thereon, be registered as to the principal thereof upon the books of the Railway Company in the name of the holder thereof, and thereupon its transferability by delivery shall cease, and thereafter it can be transferred only by the registered holder or his attorney by transfer duly made upon said books, unless the last transfer shall have been made to bearer, and this bond shall be subject to successive registrations and transfers to bearer at the option of the holder, but such registration shall not restrain or effect the transferability of the coupons by delivery.

After six months default in the payment of any semi-annual installment of interest hereon, the principal of all the bonds secured by said indenture of mortgage or deed of trust may be made immediately due and payable as prescribed therein.

This bond is entitled to the benefit of the provisions of the sinking fund provided in said mortgage or deed of trust, and may be paid prior to the maturity thereof at one hundred and five 174 per cent. of the par value thereof, and accrued interest thereon, as provided in said mortgage or deed of trust.

This bond shall not be valid until the certificate endorsed hereon shall have been signed by the Central Trust Company of New York, one of said trustees, or its successor or successors in the trust, and it is issued and held under and subject to the terms and conditions of the said mortgage or deed of trust.

In witness whereof, the said Louisville, New Albany and Chicago Railway Company has caused its corporate seal to be hereto affixed and these presents to be signed by the president and attested by its secretary, and has caused each of the said coupons to be attested by the engraved signature of its treasurer, this first day of September, one thousand eight hundred and ninety-four.

LOUISVILLE, NEW ALBANY AND
CHICAGO RAILWAY COMPANY,

[SEAL] By.....
President.

Attest:

.....
Secretarty.

Exhibit A to same.

(Form of Coupon.)

The Louisville, New Albany and Chicago Railway Company, on.....will pay to bearer twenty-five dollars in gold at is office in the City of New York, being six months' interest on its equipment five per cent. Gold Bond No. .....

Treasurer.

(Form of Trustee's Certificate.)

Central Trust Company of New York hereby certifies that this is one of the bonds issued under the mortgage or deed of
175 trust of the Louisville, New Albany and Chicago Railway Company, bearing date September 1, 1894, and referred to therein.

CENTRAL TRUST COMPANY OF NEW YORK,
Trustee.

By.....
Vice-President.

And whereas, such bonds are not to be entitled to share in the benefit or security of this mortgage or deed of trust unless they shall have endorsed thereon such certificate of the Central Trust Company of New York, or its successor or successors in this trust;

And whereas, the said coupons are to be issued with the engraved signature of the treasurer of the railway company, it being, however, agreed by it that when thus issued such engraved signature shall be as binding as if the signature of such treasurer were affixed to such coupons in his own proper handwriting;

And whereas, by and in accordance with the resolutions of the Board of Directors and of all the stockholders of the railway company adopted at meetings duly and regularly called and held, it has been determined to secure the payment of all the said bonds equally, principal and interest, by this mortgage or deed of trust, in the manner and to the effect hereinafter expressed;

Now, therefore, this indenture witnesseth, that in consideration of the premises and of the sum of one dollar to it paid by the said parties of the second part, the receipt whereof is hereby acknowledged, and to secure the payment of the principal and interest
176 of all the bonds issued hereunder according to the tenor and

effect thereof without preference or priority, and equally and ratably, the party of the first part hath granted, bargained, sold aliened, remised, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey and confirm, unto the parties of the second part, and to the survivor of them, and their successors and assigns forever, all the railway system and property of the said party of the first part of every kind and nature and however owned, held, leased or enjoyed, together with all the equipment, appurtenances and franchises thereunto appertaining, being now particularly described as follows: All the present line of railway extending from New Albany, Indiana, to Michigan City in the same state, and also from Indianapolis, Indiana, to a point on the state line between Indiana and Illinois, about twenty miles southeast of the City of Chicago, Illinois, and also its proprietary and owned line of railroad called the Bedford and Bloomfield Railroad extending from Bedford to Switz City, in Indiana; and also its other proprietary and owned line of railroad called the Orleans, West Baden and French Lick Springs Railroad, extending from Orleans to French Lick, Indiana; and also all its lands, station buildings, tracks and terminal facilities in the City of Louisville, Kentucky; and also all its rights, interest, proprietary and leasehold estate and terminal facilities in the franchises, property, tracks and station buildings of the Chicago and Western Indiana Railroad Company, and in the Belt Railway Company of Chi-
177 cago, in the City of Chicago, or elsewhere in the State of Illinois; and also all its real estate, trackage, leasehold and contract rights and terminal properties, stations, sidings and franchises in the City of Indianapolis, Indiana; and also all leasehold and contract rights, trackage and terminal facilities vested fn the party of the first part by virtue of its certain written contracts with the Jeffersonville, Madison and Indianapolis Railroad Company, the Pennsylaniva Company and the Louisville Bridge Company, whereby the trains and traffic of the said party of the first part are moved and handled between the City of New Albany, Indiana, and the City of Louisville, Kentucky, the before-mentioned system of railroads owned by the said party of the first part, and exclusive of tracks leased and operated by it, being about five hundred and twelve miles in length, and situate in the counties of Floyd, Clark, Washington, Orange, Lawrence, Green, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Stark, LaPorte, Marion, Hamilton, Boone, Clinton, Carroll, Jasper, Newton and Lake, in the State of Indiana, and Cook County, in the State of Illinois, and Jefferson County, in the State of Kentucky, including and conveying by these presents all the property of every sort or nature, real, personal and mixed,

Exhibit A to same

Exhibit A to same.

now owned by the said Railway Company, for the purposes of and connected with or appertaining to the railroads or railways above mentioned and described, together with all lands, tracks, lines, rails, bridges, ways, buildings, shops, tanks, piers, wharves, structures, erections, turn-tables, 178 fences, walls, fixtures, franchises, privileges and rights of the Railway Company, and also all locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured and unmanufactured materials, coal, wood and supplies of every kind belonging or appertaining to the Railway Company; and also all tools, incomes, issues, and profits arising out of the said property and its operation, and all the rights to receive and recover the same, also all estate, right, title and interest of the party of the first part, in and to any and all real estate belonging to said party of the first part; also all leasehold lands, with the buildings thereon erected, it being the true intent and meaning of these presents that the said Railway Company, party of the first part, shall and doth convey to the said trustees all and all manner of franchises, of every kind and description, however derived and wherever situate, all and all manner of real estate or interest therein, wherever such real estate may be situate, and all and all manner of personal property, of whatever nature or description the same may be, at the date of these presents owned or posessed by the said Railway Company, whether within or without the State of Indiana; and also all choses in action of every kind and description, including bills receivable, book accounts, traffic balances, all books of record and all accounts of every kind and description, all papers, maps, inventories and documents, in any wise referring or relating to the property or franchises hereby conveyed; and also all franchises and property and all personal rights or interest in any franchises or property, 179 of every kind and description, real, personal or mixed, and wherever the same may be situate, that may at any time before or after the date of this indenture, be acquired by or for the said Railway Company for the purposes connected with or appertaining to said railways hereby conveyed, all of which it is hereby covenanted shall enure, by way of accretion to the benefit and advantage of said trustees, and by the way of further and better security for the bonds to be issued hereunder; it being intended and hereby expressly covenanted that the lien of this indenture shall embrace and bind all railroads, real and personal property, choses in action, contract rights and franchises which the said Railway Company now owns, as fully and to the same extent as if such property were specifically described herein and conveyed hereby.

To have and to hold, all and singular, the above-mentioned

and described railways, premises and property, rights, franchises and appurtenances unto the said parties of the second part, their and each of their successor or successors and assigns forever; in trust, nevertheless, for the equal pro rata benefit and security of the holders of all the said bonds secured hereby without any preference or priority by reason of priority in time of issue or negotiation thereof, or otherwise, and for the uses and purposes and upon the trusts, conditions, covenants and agreements hereinafter declared and expressed. Exhibit A to same.

And in further consideration of the premises and of the mutual covenants and agreements hereinafter set forth and of one dollar paid by each party to each of the others, and it is expressly
180 agreed by and between the parties hereto that the equipment and rolling stock at any time held or acquired by the parties of the second part or either of them, their and each of their successor or successors, as provided in this indenture, are and shall be charged with the agreements, and are and shall be held by the trustees upon the trusts and for the uses and purposes following.

Article First. The Railway Company, in consideration of the undertakings and agreements of the trustees herein set forth, hereby agrees forthwith to execute and issue in the form hereinbefore recited, and to deliver to the Trust Company to be certified, issued and used for the purposes hereinafter described, bonds of the Railway Company intended to be secured hereby to an amount not exceeding one million dollars, and the Trust Company shall thereupon endorse upon each of said bonds the certificate hereinbefore provided, and shall deliver said bonds upon the order of the Railway Company or its president or secretary only at the time and in the manner following, that is to say:

If and whenever the equipment and rolling stock, included in any of the parcels hereinbefore described, shall be transferred to, and the title thereto vested in, the Trust Company by proper instrument in writing, the Trust Company shall certify and deliver as aforesaid bonds of the issue hereby secured, the principal of which bonds shall be equal in amount to the cost of such parcel of equipment and rolling stock as hereinbefore stated.

If the bonds remaining in the hands of the Trust Company at
181 the time when the title to all of said equipment and rolling stock included in all of said parcels hereinbefore described shall have been so transferred to it shall not be equal to the cost

it A to same

of the final parcel so transferred to it, said Trust Company shall as soon as the title to all of said equipment and rolling stock have been so transferred to it certify and deliver as aforesaid, all bonds of the issue above mentioned and intended to be hereby secured which shall still remain in its hands unissued.

Article Second. The Trust Company agrees with the respective persons, firms and corporations who shall at any time become the holders of the bonds or coupons issued hereunder and with the Railway Company that it will hold all the rolling stock and equipment acquired by it with the bonds issued hereunder and intended to be hereby secured as hereinbefore provided in trust under the provisions of this indenture for the equal benefit and security of all the persons, firms and corporations who shall at any time become holders of said bonds or coupons without priority, preference or distinction as to the lien or otherwise by reason of priority in time of the issue or negotiation of any of said bonds so that all of said bonds shall have the same right, lien and privilege under and by virtue of this indenture with like effect as if they had all been executed, delivered and negotiated simultaneously on the date hereof.

Article Third. The Railway Company agrees to pay the
182 principal and interest of all the bonds duly issued hereunder according to the terms thereof when such principal and interest shall become or be due according to the terms of said bonds and of the coupons for interest thereto appertaining without deduction from principal or interest for any taxes, assessments or governmental or other charges imposed on this deed of trust or mortgage, or on any bonds issued hereunder, or on any property or franchises at any time covered hereby, the Railway Company hereby agreeing to pay the same. As the coupons appertaining to said bonds are paid they shall be canceled, and no purchase of any coupons, nor any advance or loan thereon or redemption thereof by or on behalf of the Railroad Company after the same have been detached from the bonds to which they belong shall keep such coupons alive or preserve their lien upon any of said property.

Article Fourth. The Railway Company hereby covenants and agrees that until the payment of all the bonds secured hereby it will, on or before the first day of September in each year, commencing with the first day of September one thousand eight hundred and ninety-eight, pay to the Trust Company the sum of thir-

ty thousand dollars, which sum shall be applied by said Trust Company as a sinking fund and to the purchase of bonds secured hereby at the market rates, not exceeding one hundred and five per cent. of the par value thereof and accrued interest thereon. In the event that such bond cannot be purchased at or below the said rate, then the bonds secured hereby shall be subject to be drawn for payment and paid as follows: If the Trust Company shall not have been able to purchase said bonds at or below 183 the said rate within thirty days after any such yearly payment shall have been made to it, said Trust Company shall draw by lot bonds secured by this mortgage to be paid for out of the moneys so paid to it at the rate of one hundred and five per cent. of the par value thereof, and accrued interest thereon, and the bonds so drawn shall cease to bear interest from and after the day specified for that purpose in the public notice of such drawing, which public notice shall be given by publication thereof twice a week for eight successive weeks in a daily newspaper published in the City of New York, but the day so specified shall not less than sixty days after such drawing. All of such bonds so purchased or drawn and the coupons appertaining thereto shall be held by said Trust Company uncancelled and shall continue to be secured hereby, and said bonds shall continue to bear interest in like manner as the other bonds still outstanding, and the coupons appertaining to such bonds so held by said Trust Company shall be paid by the Railway Company when and as the same shall mature, the Railway Company hereby agreeing to pay the same, and any and all sums of money so received by said Trust Company for interest upon said bonds so held by it for the sinking fund shall be applied by it to the purchase or redemption of bonds at the times when and in the manner that the said yearly payments to be made by the Railway Company for the sinking fund are to be so applied. All bonds so held by the Trust Company for the sinking fund shall be stamped with the words following:

Exhibit B to same.

"Held for the sinking fund of the Louisville, New Albany 184 and Chicago Railway Company Equipment Five Per Cent. Mortgage."

The Railway Company, if it shall elect so to do, may, on any day on which interest is payable upon said bonds issued hereunder and secured hereby, upon giving notice of its intention so to do by publication thereof twice a week for ninety days in two daily newspapers published in the City of New York, pay all or any part of the said bonds issued hereunder and secured hereby at one

Exhibit A to same.

hundred and five per cent. of the par value thereof and accrued interest thereon, and said bonds so to be paid shall cease to bear interest from and after the date mentioned in such notice as the date on which payment will be made.

In the event that the Railway Company shall elect to pay all of said bonds outstanding at the time of such election, the bonds to be paid shall be drawn by lot by the Railway Company and the numbers of the bonds so drawn to be paid shall be given in the published notice above provided.

Article Fifth. Until default shall be made by the Railway Company, its successors or assigns, in the payment of the principal or interest of the said bonds or some of them, or some part thereof, or in the payment of the sinking fund hereinbefore provided to be paid for the purchase or redemption of said bonds, or some part of such sinking fund, the Railway Company, its successors and assigns, shall be suffered and permitted to possess and enjoy the mortgaged premises hereby conveyed and transferred by it, with the appurtenances, and all and singular the rights
185 and franchises hereinbefore described, and hereby conveyed and transferred, and to receive, take and use the tools, revenues, incomes, earnings and profits thereof.

Article Sixth. The trustees agree with the railway company that so long as there is no default by the railway company in the payment of the principal or interest of said bonds, or any of them, or any part thereof, or in the payment of the sinking fund hereinbefore provided to be paid for the purchase or redemption of said bonds, or any part of such sinking fund, and so long as there is no proceeding of any kind by or against the railway company for the appointment of a receiver or for the foreclosure of any deed of trust or mortgage, the railway company shall have, and is hereby given, the possession and use of the equipment and rolling stock at any time by the Trust Company under the provisions hereof out of the proceeds of the bonds issued hereunder and secured hereby, with the right to receive the earnings thereof.

Article Seventh. The railway company agree with the trustees and with the persons, firms and corporations who shall at any time become holders of bonds or coupons issued under this indenture, that it will hold and use said equipment and rolling stock in accordance with the provisions of this indenture, and will not transfer possession of any thereof to any other persons or corpora-

tions except temporarily in the usual course of traffic without the written consent of the Trust Company, and that in case possession of any of the equipment or rolling stock furnished for its use by the Trust Company, as provided herein, shall in the course of 186 traffic be transferred from the railway company to any person or corporation, such other person or corporation, so long as any of said equipment or rolling stock shall be in their possession, shall hold the same as bailee of the Trust Company and not of the railway company, and shall be answerable to the Trust Company for the same, and that the railway company in any arrangement it shall make with such other persons or corporations in respect thereto, shall act ouly as the agent of the Trust Company and not on its own behalf. Exhibit A to same.

The railway company further agrees that it will at its own expense keep all the equipment and rolling stock at any time furnished for its use by the Trust Company, as herein provided, in good order and repair, and will at once replace at its own cost any of the same that shall be destroyed from any cause whatever during the continuance of this trust, with other like equipment or rolling stock of equal value, or with such other rolling stock and equipment of different character but of equal value, as may be approved in writing by the Trust Company, and that the railway company will promptly file with the Trust Company a statement in detail of the former equipment and rolling stock, and of the equipment and rolling stock so provided in replacement thereof, and that the railway company will make all repairs and replacements to the satisfaction of any competent inspector at any time selected by the trustee to examine the same, and will cause all the rolling stock and equipment in replacement of any previously covered hereby to be transfered to the 187 Trust Company by proper bills of sales or other instruments of transfer and free of lien, and will cause to be marked on each side of every article of rolling stock and equipment held or acquired by the authority of the trustee under the terms and provisions and for the purposes of this indenture the words "Owned by Central Trust Company of New York, Trustee Louisville New Albany and Chicago Railway equipment Mortgage," and the proper number, and will not allow the name or designation of any other company as the owner to be placed on any such railroad equipment or rolling stock, and will immediately restore any such marks of ownership at any time destroyed, and will do such other acts as the Trust Company shall require for the full protection of the property and rights of the trustees and the holders of the bonds issued hereunder.

The Railway Company further agrees that it will through its

Exhibit A to same.

general manager or other proper officer or agent furnish to the Trust Company yearly in the month of August during the continuance of this trust, or oftener if required by the Trust Company, a statement of all the equipment and rolling stock then in use by the Railway Company hereunder, with a special statement of the number and description of all such as shall have been destroyed and substituted during the year next preceding, and that the Trust Company shall have the right to inspect the said equipment and rolling stock as often as it shall desire during the continuance of this trust by any person appointed by the Trust Company, and that the Railway Company will provide the necessary means or the necessary authority to enable such persons to travel without
188 charge over the railroads on which any of such equipment or rolling stock may be, for the purpose of making such inspection.

The Railway Company further agrees that it will insure all the equipment and rolling stock at any time furnished for its use by the Trust Company as herein provided, (including all replacements thereof) as the property and for the benefit of the Trust Company, for such amounts as other similar railroad equipment and rolling stock are insured by the Railway Company, and will keep the said equipment and rolling stock so insured until the bonds hereby secured are fully paid, and will deposit the policies of insurance or certificates thereof with the Trust Company.

Article Eighth. If default shall be made in the payment of any semi-annual installment of interest mentioned in the said bonds, or any part thereof, according to the tenor and effect of said bonds, and the coupons for interest thereunto appertaining, and if such default shall continue for a period of six months, then the parties of the second part, or their successor or successors in the trust, may at their option, and upon being requested in writing by the holders of a majority in amount of the said bonds then outstanding shall declare the principal of all the said bonds to be immediately due and payable, and thereupon the principal of all of said bonds shall become due and payable forthwith, anything in said bonds contained to the contrary notwithstanding. Such declaration may be made by notice in writing to the party of the first part, or by publication thereof once in some daily newspaper published in the City of New York.

189 Article Ninth. If default shall be made in the payment of the principal or interest moneys mentioned in the said bonds or the

coupons thereunto appertaining, or any or either of them, or any part thereof, according to the tenor and effect of said bonds and coupons, or either of them, and such default, if in payment of interest shall have continued for six months, or if default shall be made in the payment of the sinking fund hereinbefore provided to be paid for the purchase or redemption of said bonds, or some part of such sinking fund. and such default in payment of any sum required to be paid for said sinking fund shall have continued for six months, or if proceedings of any kind shall be commenced by or against the Railway Company for the appointment of a receiver, or for the foreclosure of any deed of trust or mortgage of the Railway Company, then, and in any such events, the parties of the second part may in their discretion, and upon being requested in writing by the holders of a majority in amount of the said bonds then outstanding, and upon being properly indemnified against costs and expenses which may be incurred by acting in pursuance of such request, shall forthwith do any or all of the things following, namely: Exhibit A to same.

1. Enter into and upon and take and hold possession of all and singular the premises, estates, franchises, rights, privileges and property hereby granted and conveyed to the parties of the second part, or intended so to be, and in person, or by one or more agents, operate the said railways, making from time to time all such repairs or replacements as they may deem judicious, and all such useful alterations, additions and improvements as the income coming into their hands shall be adequate to pay for, and take, collect and receive all fares, freights, tolls, earnings, issues, profits and incomes of said railways and property, and apply such fares, freights, tolls, earnings, issues, profits and income to the proper expenses of holding and managing the said railways and other premises, and conducting the business thereof, and payment of and for any and all taxes, assessments, charges, rentals or such liens superior to the lien of these presents upon said premises as they may deem proper, and all necessary and proper repairs, replacements, alterations, additions and improvements upon said property, and all expenses, costs, charges and counsel fees in the premises of the said parties of the second part or their successors in trust, and a reasonable compensation for their services, and next to the payment of the interest and principal of the said bonds according to the tenor and effect thereof as the same may be or become due and payable; and, in case the principal moneys secured by said bonds shall not have become due, the moneys applicable to the payment of interest shall be applied upon the interest warrants remaining in default in the order of their maturity; and, in case the said principal moneys shall

Exhibit A to same.

have become due, the moneys applicable to the payment of the principal and interest on such bonds shall be applied to the payment of such principal and interest pro rata without any preference or priority whatsoever.

191 2. After entry or without entry cause the whole of the said premises, estates, franchises, rights, privileges and property hereby granted and conveyed to the parties of the second part, or intended so to be, with their appurtenances, and all benefit and equity of redemption of the said party of the first part and its successors and assigns therein or thereto to be sold at public auction in the City of Indianapolis in the State of Indiana or in the City of New York, in the State of New York, giving at least three months previous notice of the time and place of such sale by publishing the same at least once in each week during such period of three months in two daily newspapers published in said City of New York and in two newspapers published in said City of Indianapolis, and giving such other notice of such sale as may be required by law, if any other notice be so required.

It shall be lawful for the said parties of the second part and their successors making such sale, and they are hereby authorized and empowered as the attorney or attorneys of the first part and its successors, by these presents duly constituted and appointed for that purpose, to make, execute and deliver to the purchaser or purchasers on such sale all such deeds and conveyances as shall be necessary or proper to convey to and vest in him or them the said premises, estates, franchises, rights, privileges and property, and every part and parcel thereof, and all of the estate, right, title and interests of the said party of the first part and its successors and assigns therein or thereto, and such sale and the deeds and
192 conveyances so to be thereupon executed shall be valid and effectual forever and shall be a perpetual bar both in law and equity against the said party of the first part and its successors and assigns, and against all persons claiming or to claim by, from or under it or them, or any of them. The receipt of the trustees or trustee who shall make the sale hereinbefore authorized shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase money, and such purchaser or purchasers, his or their heirs or assigns or personal representatives, shall not, after paying such purchase money and receiving such receipts of such trustees or trustee thereof, be obliged to see to the application of such purchase money upon or for the trusts or purposes of these presents, or be in any wise answerable or any loss, misapplication

or non-application of such purchase money by the trustees or trustee. Exhibit A to same.

3. Proceed by the bill in equity or other proper proceeding in any court or courts of competent jurisdiction to foreclose this mortgage or enforce the rights, liens and securities of the trustees or trustee and the bondholders thereunder, and thereupon said trustees or trustee shall be entitled to have the said premises, estates, franchises, rights, privileges and property hereby granted or conveyed to them, or intended so to be, sold by judicial sale under the order or decree of such court or courts for or towards the satisfaction of the principal and interest due or owing upon them the then outstanding bonds issued under or entitled to
193 the benefit of the security of this mortgage, and for the enforcement of the rights, liens and securities of the trustees or trustee and bondholders.

4. Demand of the Railway Company and of any other person or corporation then having the same the immediate possession of any or all the existing equipment and rolling stock which shall have been furnished for the use of the Railway Company under the provisions of this deed of trust, including all replacements thereof, and with such force as may be necessary enter upon the railroad and other premises of the Railway Company and of any other person or corporation on whose premises the same may be, and take immediate and maintain exclusive possession of any or all of said equipment and rolling stock, and upon such retaking thereof hold and use or operate the same, or lease the same, or otherwise contract for the use thereof, making from time to time all proper repairs thereof and paying insurance, taxes and other necessary expenses connected therewith, and receive the earnings, rentals and profits thereof.

5. After such retaking, proceed with or without the order or decree of any court of equity or other competent court having jurisdiction in the premises, to sell any or all of said equipment or rolling stock at public sale in such lots or amounts, on such notice and at such times and at such places as the Trustees or Trustee or the court may determine, and adjourn any sale from time to time, and upon any such sale to transfer and deliver any property sold to the purchaser thereof by good and sufficient instruments of
194 transfer, but without liability to see to the application of the purchase money and without obligation to inquire into the necessity, expediency or authority of any such sale, which shall be a per-

Exhibit A to same.

petual bar, both in law and equity, against the trustees and each of them, and their successors and assigns, or the successors and assigns of either of them, and against the Railway Company, and against all persons claiming under them or either of them.

Article Tenth. It is hereby expressly declared and agreed that the parties of the second part, or their successors in the said trust, shall, out of the proceeds of any sale made under the provisions of this indenture, whether by judicial proceedings or otherwise, in enforcement of the security afforded by these presents, in the first place pay and retain all costs and expenses attending such sale, and all counsel fees and other expenses incurred by them, or either of them, in reference to the same, and receive and retain a reasonable compensation for their own services in the premises, and also any balance which may be due to them or either of them on account of any disbursements or expenses paid or incurred in or about the care and management of the said premises subsequent to the taking possession thereof by them, or either of them, including the reasonable compensation of any agent or agents who may be employed in or about such care and management, and the rest of the proceeds of such sale, or so much thereof as may be necessary, shall be applied to the payment of the whole amount of principal and interest which shall then be
195 due and unpaid upon the bonds secured hereby, or any of them, whether the said principal, by the tenor of the said bonds, be then due or yet to become due; and, in case of deficiency in such proceeds to pay in full the whole amount of principal and interest owing or unpaid upon the said bonds, they shall be paid ratably in proportion to the amounts owing and unpaid upon them respectively, and without discrimination as between principal and interest, and without preference of the holder of any bond or coupon over any of the others; and any surplus which may remain after the full payment of the principal and interest of all the said bonds shall be paid over to the said party of the first part, or its successors or assigns, upon lawful demand being made therefor.

Article Elevnth. It is expressly agreed by the Railway Company that in case of a retaking by the Trustees or Trustee of any of the equipment or rolling stock at any time furnished for the use of the Railway Company hereunder, or substituted for any so furnished, or in case the Trustees or Trustee shall demand the possession of the same under any of the agreements herein contained, then the Railway Company will without cost or charge to the

Trustees or Trustee, or to those beneficially interested in the trust hereby created, cause every Railroad Company having the possession or use of any of said property from the Railway Company to draw forthwith in the usual manner and at the usual speed of freight trains the said equipment and rolling stock to such points or point on the railroad where the same may be as shall be
196 reasonably designated by the Trustees or Trustee, and that the Railway Company will draw said equipment and rolling stock from any points of connection with other railroads where the same may be to such point or points on any of its railroads as shall be reasonablly designated by the Trustees or Trustee, and that the Trustees or Trustee shall have the right, without expense to them or it, to keep and store said equipment and rolling stock upon any of the railroads or premises of the Railway Company until sold, as provided herein, and until a reasonable time for removal thereof, or until removed by Trustees or Trustee without sale. Exhibit A to same.

Article Twelfth. The Railway Company further agrees that in case of any default on its part hereunder all the earnings of the said equipment and rolling stock at any time furnished for the use of the Railway Company by the Trutsees or Trustee as herein provided or substituted for any so furnished, shall then and thereafter be payable to the Trustees or Trustee and be applied by them or it as if received for the use thereof after a retaking under the provisions hereof, and the Railway Company agrees forthwith upon the said default to give notice to the Railroad Clearing House Association, and any railroad companies which at the time shall hold or owe any moneys for the service or use of the said equipment or rolling stock to pay over all such moneys to the Trustees or Trustee, and hereby authorized the Trustees or Trustee to receive the same and to give such notice with like
197 effect as if given by the Railway Company; it is agreed, however, that such notice shall not be necessary to enable the Trustees or Trustee to collect and receive such earnings in case of any such default.

Article Thirteenth. No bondholder or bondholders shall take, begin, institute or prosecute any proceeding or proceedings to enforce any of the provisions hereof, or to realize upon any of the security herein provided, or to foreclose this mortgage, until after he or they shall have requested the Trustees or Trustee, in writing, to take, begin or institute such proceeding or proceedings, and offered proper indemnity, as hereinbefore provided, and said

Exhibit A to same.

Trustees or Trustee shall have the right to require the person or persons presenting any request mentioned or provided for in this mortgage to furnish proof, by affidavit or affidavits of the signers, as to the ownership of the bonds represented by him or them, and of his or their authority to subscribe such request, in case the same shall be subscribed by any other person than the owner; and, if such proof be so required by any other person than the owner; and, if such proof shall have been furnished to the Trustees or Trustee.

Article Fourteenth. The Railway Company agrees that, in case of any default upon its part hereunder, it will not set up, claim or seek to take advantage of any present or future valuation, stay, appraisement, redemption or extension law or laws which might prevent, hinder or delay the exercise by the Trustees
198 or Trustee of the right to retake possession of any of the equipment or rolling stock mentioned or described herein, or covered hereby, or to operate, use, lease or otherwise contract to the use of the same, or to sell any of the property covered hereby or described herein, or which might prevent or delay the immediate enforcement or foreclosure of this indenture or the absolute sale and delivery of any of said property under any proceedings for the purpose, but hereby irrevocably waives the benefits of all such laws, and also hereby irrevocably waives all right to have any of the property covered hereby or described herein marshaled upon any foreclosure sale thereof, and consents that the same be sold either as a whole or in such lots or amounts as may be determined by the Trustees or Trustee, or by any court of competent jurisdiction in which foreclosure proceedings, with respect to such property, may be pending.

Article Fifteenth. It is agreed between the parties hereto that at any sale of any equipment and rolling stock hereinbefore mentioned, or at any sale of the premises or property herein conveyed to the trustees or trustee, whether made by the trustees or trustee or by judicial authority, the trustees or trustee may bide for and purchase any of the property so sold, or cause the same to bide for and purchased, and that, in the event of the purchase of any of said property by the trustees or trustee, the right and title thereto shall vest in said trustees or trustee, and any bondholder or bondholders may bide for and purchase any of the property so sold at any sale thereof.

Article Sixteenth. In case of any such sale as is herein

Exhibit A to same.

199 authorized being made of the mortgaged premises and property or of the equipment and rolling stock hereinbefore mentioned, in enforcement of the lien hereby created, in the course of judicial proceedings or otherwise, the purchaser or purchasers at such sale shall be entitled, in making settlement for any payment of the purchase money bidden at such sale, to turn in or use towards the payment of such purchase money the bonds and coupons held by such purchaser or purchasers to or towards the payment whereof the net proceeds of such sale shall be legally applicable, reckoning such bonds and coupons, or the amounts so turned in or used of the same for such purpose, at such sum as would be payable out of the net proceeds of such sale to such purchaser or purchasers as holder or holders of such bonds and coupons for his or their just share or proportion of such net proceeds of sale upon due apportionment of and concerning such net proceeds. If the net proceeds of such sale be sufficient to extinguish such bonds and coupons so turned in or used, they shall be canceled by the person or persons making the sale; and, if such net proceeds shall suffice to make payment only or such bonds and coupons, due endorsement shall be made upon the same of the amount realized on account thereof, and said bonds and coupons so endorsed shall be returned to the holders.

Article Seventeenth. It is expressly agreed by and between the parties hereto that all the costs, charges and legal or other expenses necessary or incident to the acquiring by or conveyance or transfer to the Trust Company of any equipment or rolling stock under the provisions hereof shall be paid by the railway company, and that until all the payments provided for in this indenture, 200 and in the bonds issued hereunder, shall have been fully made by the railway company, and all the agreements on its part hereunder shall have been kept and performed, the title to the equipment and rolling stock acquired by means of the bonds issued hereunder in accordance with the provisions hereof shall not pass to or vest in the railway company, nor shall the railway company have any right in respect to said equipment and rolling stock, except that of using the same as provided in this indenture.

Article Eighteenth. While there shall be no existing default in the payment of the principal or interest of any of the said bonds secured hereby, or in the performance of any of the matters and things hereby required to be done or performed by the railway company, the railway company shall have the right to sell, lease and otherwise dispose of, free from the lien of this mortgage or deed of trust, any real or personal property conveyed to the trustees

Exhibit A to same.

or trustee in this indenture which may no longer be required by the railway company for the purposes of its incorporation, and the trustees or trustee shall have full power thereupon to release from the lien of this mortgage or deed of trust any property so sold, leased or otherwise disposed of. Any property which may be required for the use in substitution for any so released or conveyed shall thereupon become subject to the lien of this mortgage, and upon request of the trustees or trustee shall be conveyed to them or it by the railway company, its successors or assigns, upon the trusts of these presents. The affidavit of the president or other proper officer of the railway company to the effect that the property so sold, leased or disposed of is no longer required by the
201 railway company for the purposes of its incorporation, shall be sufficient evidence to the trustees or trustee of this fact, and the trustees or trustee shall not be liable to any persons or person by reason of any act done or performed under the provisions of this article in good faith.

Article Nineteenth. Said party of the first part, for itself its successors and assigns, doth hereby covenant, grant and agree to and with the said parties of the second part and their successors in the trust, and to and with the respective persons and corporations who or which shall at any time become holders of the said bonds hereby secured, or any of them, that the said party of the first part, its successors and assigns, shall and will at any time, and from time to time hereafter upon request, make, do, execute and deliver all such further and other acts, deeds and things as shall be reasonably advised, devised or required to effectuate the intention of these presents, and to assure and confirm to the said parties of the second part, or their successors, all and singular the property and estate, real and personal, hereinbefore described and hereby intended to be granted, and so as to render the same, and especially such portions thereof as shall be hereafter acquired by the said party of the first part or its successors, available for the security and satisfaction of the said bonds according to the intent and purpose herein expressed.

Article Twentieth. If the party of the first part, or its successors or assigns, shall well and truly pay, or cause to be paid, to the holders of the said bonds and coupons the principal and
202 interest moneys secured hereby when and as the same shall become due and payable, according to the terms, provisions, conditions, tenor and effect of the said bonds and coupons, then these presents and the estate hereby granted to the trustees or

trustee shall cease, determine and be null and void, and the parties of the second part, and their successors, agree that in that event all of the said equipment and rolling stock then owned and held by them under the provisions of this indenture shall forthwith become the property of the railway company, and the parties of the second part, or their successors, shall thereupon execute and deliver such proper instrument or instruments as shall be necessary to convey said equipment and rolling stock to the railway company and release the same from all liens created by this deed of trust or mortgage. Exhibit A to same.

Article Twenty-First. It is expressly covenanted, agreed and declared by and between the parties hereto that the parties of the second part accept the trusts conferred upon them by these presents upon the understanding that they, said parties of the second part, and their successors in the trust, shall not, nor shall either of them, be liable or accountable for the acts, default or negligence of any agents or attorney who may be appointed by them or either of them under or by virtue of or for the purposes of these presents to do any of the matters or things herein provided for if such agent or agents or attorney be selected with reasonable care; nor shall either or any trustee hereunder be liable or accountable for any misconduct, negligence or default of any other trustee hereunder; nor shall said parties of the second part, or their successors in 203 the trust, incur any liability or responsibility whatever in consequence of allowing the Railway Company or any railroad company under it, through lease, contract or otherwise, to have or retain possession or use of the said equipment and rolling stock at any time furnished for the use of the Railway Company by the parties of the second part, or their successors in the trust, as herein provided; and that the parties of the second part and their successors in the trust shall not be liable for any destruction, deterioration, loss or damage to any of the property covered hereby or mentioned herein, or for anything whatsoever in connection with this trust except willful misconduct or gross negligence; and that the parties of the second part and their successors in the trust shall be personally liable for any debts contracted by them, for damages to persons or property carried or injured, or for salaries or non-fulfillment of contracts during any period while it or they shall manage the trust property or premises upon entry as aforesaid, but that such debts and liabilities shall be and constitute a first and paramount charge upon the trust funds and property. And in case the parties of the second part or their successors shall retake possession of any of the property covered hereby or mentioned herein, and shall use or

Exhibit A to same.

operate the same, as herein provided, in addition to such indemnity as may be required under the terms hereof from the person or persons requesting them so to do, they shall be indemnified out of the moneys and property which shall come into their hands for all claims and demands against them.

Article Twenty-Second. The trustees under this mortgage, or either of them, and their successors in the trust, may at any time resign the trust hereby created by giving notice of such
204 resignation in writing to the party of the first part, or its successors. Any vacancy in the office of trustees or trustee hereunder, whether created by resignation or otherwise, may be permanently filled by the appointment of new trustees or a new trustee by an instrument or concurrent instruments in writing, executed under the hands and seals of the holders of a majority in interest of the bonds secured hereby, and then outstanding, or their attorneys in fact thereunto duly authorized; but the board of directors of the party of the first part, or its successors, may make a temporary appointment to fill such vacancy until a permanent appointment shall be made in the manner above provided. Any new trustees or new trustee appointed as aforesaid, whether by a permanent or temporary appointment, shall, upon its, his or their appointment, and without any other act, deed or conveyance, become and be vested with the estates, trusts, rights, powers and duties of the trustees or trustee in whose place it, he or they shall have been appointed; but, nevertheless, the respective parties hereto and their successors and assigns shall, and will upon request, make, and execute and deliver all such releases, conveyances and assurances as shall be appropriate to vest in and confirm and assure to such new trustees or new trustee such estates, trusts, rights, powers and duties according to the intent above expressed.

The trustees or trustee under this indenture shall receive just compensation for all services which they or either of them may render in connection with the trust, to be paid by the Railway Company, or out of the trust estate.

205 Article Twenty-Third. It is mutually agreed that the term or words the trustee or trustees, or the said trustee, or the said trustees, as used in this indenture, shall be held and construed to mean the trustees or trustee for the time being, whether original or new, and that all the covenants, stipulations, promises and agreements herein contained, by or on behalf of the party of the first part herein contained, by or on behalf of the party of the first

part hereto, shall be and are binding upon its successors and assigns, whether so expressed or not. Exhibit A to same.

The parties of the second part hereby accept the trust conferred upon them by these presents.

In witness whereof, the said Louisville, New Albany and Chicago Railway Company, the said party of the first part, has caused these presents to be signed by its president and sealed with its corporate seal and attested by its secretary; and to testify their acceptance of the trusts hereby created the said Central Trust Company of New York has caused this instrument to be signed in its behalf by its vice-president, sealed with its corporate seal, and attested by its secretary, and the said James Murdock has hereunto affixed his hand and seal the day and year first above written.

LOUISVILLE, NEW ALABNY AND
CHICAGO RAILWAY COMPANY,
By SAMUEL THOMAS,
President.

Attest:
[SEAL.] W. H. LEWIS,
Secretary.

CENTRAL TRUST COMPANY OF NEW YORK,
By E. FRANCIS HYDE,
Second Vice-President.

Attest:
[SEAL.] C. H. P. BABCOCK,
Secretary.

JAMES MURDOCK. (Seal.)

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.

206 Be it remembered that on this 6th day of September, A. D. 1894, before me, a Notary Public residing in said State and Kings County, personally appeared Samuel Thomas, president of the Louisville, New Albany and Chicago Railway Company, personally known to me to be the president of said company, and personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he, on behalf of said Railway Company, and by authority of its Board of Directors, had signed and delivered said instrument as the free and voluntary act of the said Railway Company for the uses and purposes therein set forth.

Exhibit A to same.

In witness whereof, I have hereunto set my hand and affixed my official seal this 6th day of September, 1894.

[SEAL.] JAMES J. MURPHY,
Notary Public, Kings Co.,
Cert. filed in N. Y. Co.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

Be it remembered that on this 8th day of September, A. D. 1894, before me a Notary Public, residing in said State and County, personally appeared W. H. Lewis, secretary of the Louisville, New Albany and Chicago Railway Company, personally known to me to be such secretary, and personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he, on behalf of said Railway Company, and by authority of its Board of Directors, had signed the said instrument and affixed thereto the official corporate seal of said Railway Company as the free voluntary act of the said
207 Louisville, New Albany and Chicago Railway Company for the uses and purposes therein set forth; that he knew the corporate seal of said company, and that the seal so affixed is said corporate seal.

In witness whereof, I have hereunto set my hand and affixed my official seal this 8th day of September, 1894.

[SEAL.] CHAS. E. BYRNE,
Notary Public.

STATE OF NEW YORK, } ss.
CITY AND COUNTY OF NEW YORK. }

Be it remembered, that on this 13th day of September, A. D. 1894, before me, a notary public residing in said State, city and county, personally appeared E. Francis Hyde, 2d Vice-President of the Central Trust Company of New York, personally known to me to be the 2d vice-president of said company and personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he, on behalf of the said Trust Company, and by the authority of its board of trustees, had executed the said instrument as the free and voluntary act of the said Trust Company for the uses and purposes therein set forth.

Also personally appeared before me at the same time C. H. P. Babcock, Secretary of the said Trust Company, personally known to me be such secretary and personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he, on behalf of the said Trust Company and by like authority, had signed the said instrument and affixed thereto the official seal of said Trust Company as the free and voluntary act of said Trust Company, for the uses and purposes therein set forth; that he knew the corporate seal so affixed is said corporate seal. Exhibit A to same.

208 In witness whereof, I have hereunto set my hand and affixed my official seal, this 13th day of September, 1894.

FRANK B. SMIDT,
[SEAL] Notary Public 289, N. Y. Co.

STATE OF OHIO,
COUNTY OF ALLEN. } ss.

Be remembered that on this 11th day of September 1894, before me, a notary public residing in said State and county, personally appeared James Murdock, personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged the execution of the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 11th day of September, 1894.

JAS. W. HALFHILL,
[SEAL] Notary Public, Allen County, Ohio.

And afterwards, at the November term of said court, on the 21 day of December, 1896, before the Honorable William A. Woods, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

And now on this 21 day of December, 1896, come the parties hereto, and thereupon, upon consent of the solicitors for the several parties, it is

Order consolidating with consolidated causes.

Ordered, that the above entitled cause be and the same is hereby consolidated with the consolidated suit now pending in this court, entitled The Farmers' Loan and Trust Company and John H. Barker, complainants, against Louisville, New Albany & 209 Chicago Railway Company and others, defendants, the same to proceed under the title of The Farmers' Loan and Trust Company and John H. Barker, complainants, against the Louisville, New Albany & Chicago Railway Company, and others, defendants.

And afterwards, towit: at the November term of said court, on the 24 day of December, 1896, before the Honorable William A. Woods, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Now on motion of Messrs. Turner, McClure & Rolston, of counsel for the complainants herein.

It is ordered, that the complainants have and they hereby are given leave to file an amended and suppemental bill of complaint herein, which is now filed and is in the words following, to-wit:

Amended and Supplemental Bill.

And now come the Farmers' Loan and Trust Company and John H. Barker, complainants herein, and, by leave of the court first had and obtained, file this, their amended and supplemental bill of complaint, against the defendants, the Louisville, New Albany and Chicago Railway Company, the Central Trust Company of New York, James Murdock and John H. Stotsenburg, and hereby repeating and expressly reaffirming all the allegations of the original bill filed herein, also alleged and set forth as follows:

First. The Olreans, West Baden and French Lick Springs Railway Company is a corporation duly created in or about the month of July, 1885, under the laws of the State of Indiana, holding the legal title to a line of railroad from French Lick to a junction with the line of the Louisville, New Albany and Chi- 210 cago Railway Company at Orleans, in the County of Orange, in the State of Indiana, which road was constructed by funds raised from the sale of the bonds issued under the mortgage to your orators to foreclose which this suit is brought, and which

road, ever since the completion of the same, has been under the control, management and operation of the defendant, the Louisville, New Albany and Chicago Railway Company, which last named company is the owner of the entire stock of the said Orleans, West Baden and French Lick Springs Railway Company, which stock is subject to the lien of said consolidated mortgage. Amended and Supplemental Bill.

On or about the 12th day of December, 1896, the said corporation, the Orleans, West Baden and French Lick Springs Railway Company, made and duly executed a certain instrument in writing in the way of a confirmatory mortgage or deed of trust to your orators, as further security for the bonds secured by said consolidated mortgage of the Louisville, New Albany and Chicago Railway Company, which said instrument in writing is in the words and figures set forth in a schedule hereto annexed, marked Exhibit "A," which is a copy of said instrument and to which your orators pray to refer as a part of this, their amended and supplemental bill of complaint herein.

Second. The Bedford and Bloomfield Railroad Company is a corporation duly created in or about the month of March, 1883, under the laws of the State of Indiana, holding the legal title to a line of railroad from Switz City, in the County of Green, in said State of Indiana, to a junction with the line of the Louisville, New Albany and Chicago Railway Company at Bedford in the 211 County of Lawrence, in said State, which road was constructed as a narrow-gauge road and afterwards into a standard gauge road, by funds raised from the sale of the bonds issued under the mortgage to your orators to foreclose which this suit is brought, and which road, ever since the completion of the same, has been under the control, management and operation of the defendant, the Louisville, New Albany and Chicago Railway Company, which last named company is the owner of the entire stock of the said Bedford and Bloomfield Railroad Company, which stock is subject to the lien of said consolidated mortgage.

On or about the 12th day of December, 1896, the said corporation, the Bedford and Bloomfield Railroad, 1896, the said corporation, the Bedford and Bloomfield Railroad Company, made and duly executed a certain instrument in writing in the way of a confirmatory mortgage or deed of trust to your orators, as further security for the bonds secured by said consolidated mortgages of the Louisville, New Albany and Chicago Railway Company, which said instrument in writing is in the words and figures set

Amended and Supplemental Bill.

forth in a schedule hereto annexed, marked Exhibit "B" which is a copy of said instrument, and to which your orators pray to refer as a part of this, their amended and supplemental bill of complaint.

Wherefore your orators pray that they may have the benefit of the proceedings taken under said original bill of complaint, and that this bill may be taken as an amendment and as supplemntal thereto, and that they may have the same relief as they have in said original bill already prayed, and in addition thereto pray
212 that all the rights and franchises and all the property, real and personal, of the said Orleans, West Baden and French Lick Springs Railway Company and of the said Bedford and Bloomfield Railroad Company may be declared subject to the lien of said consolidated mortgage, and that the amount found due, as prayed in said original bill of complaiint, may be found to be the first lien on the property of said Orleans. West Baden and French Lick Springs Railway Company and said Bedford and Bloomfield Railroad Company, according to the terms of the said consolidated mortgage or deed of trust, and of said confirmatory deed bearing date December 12, 1896, made by the Orleans, West Baden and French Lick Springs Railway Company to your orators, the Farmers' Loan and Trust Company and John H. Barker, and, said confirmatory deed bearing date December 12, 1896, made by the Bedford and Bloomfield Railroad Company to your orators, the Farmers' Loan and Trust Company and John H. Barker, and that in default of the said defendant, the Louisville, New Albany and Chicago Railway Company, paying the amount found due upon the said consolidated mortgage bonds and the coupons thereto, for interest or principal or both, as in said original bill prayed, all the property and franchises of the Orleans, West Baden and French Lick Springs Railway Company and of the Bedford and Bloomfield Railroad Company may be sold under a decree of this court and according to law and the practice of this court to satisfy the amount so found due. And your orators further pray that the defendants and each of them may be directed to answer the matters alleged in this, their amended and supplemental bill of complaint, and that your orators may have such other and further
213 relief in the premises as may be just.

THE FARMERS' LOAN AND TRUST COMPANY,
By R. G. ROLSTON,
President.

Attest: E. S. MARSTON, Secretary.

TURNER, MCCLURE & ROLSTON, Solicitors for Complainant.
HERBERT B. TURNER, Of Counsel.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK. } ss.

Amended and Supplemental Bill.

Roswell G. Rolston, being duly sworn, deposes and says, that he is the Farmers' Loan and Trust Company, one of the complainants above named, and has been such president for a number of years past; that he has read the foregoing amended and supplemental bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein alleged upon information and belief, and as to those matters he believes it to be true; that this verification is not made by the said complainant because it is a corporation; that his knowledge is derived from having taken part in the transactions spoken of and from statements made to him, and from examination of the papers, and the same constitute his grounds of belief; that the seal affixed to the said amended and supplemental bill of complaint and was so affixed by its authority.

R. G. ROLSTON.

Sworn to before me this 22 day of December, 1896.
Notary Public No. 18,
New York County.

WM. B. CARDOZO.

214 EXHIBIT "A."

Exhibit A to same.

This Indenture, made and entered into on this 12th day of December, 1896, by and between the Orleans, West Baden and French Lick Springs Railway Company, hereinafter called Company, a corporation duly created and existing under the laws of the State of Indiana, party of the first part, and the Farmers' Loan and Trust Company, a corporation duly created and existing under the laws of the State of New York, and John H. Barker of the State of Indiana, hereinafter called trustees, parties of the second part:

Witnesseth: Whereas, said Company holds the legal title to a line of railroad from French Lick to a junction with the Louisville, New Albany & Chicago Railway Company at Orleans, in the County of Orange, in the State of Indiana:

And whereas, at a meeting of the Board of Directors of said Company duly and legally convened and held on the 11th day of

Exhibit A to same. December, 1896, the said Board being fully authorized by law so to do did resolve as follows, to wit:

"Whereas, on the first day of January, 1886, the Louisville, New Albany & Chicago Railway Company executed its certain deed of trust to the Farmers' Loan and Trust Company, of New York, and John H. Barker, of Michigan City, Indiana, to secure certain bonds therein described:

And whereas, said bonds were duly issued and disposed of and part of the proceeds thereof were used for the construction of this Company's road from French Lick to Orleans, all in the County of Orange, in the State of Indiana:

215 And whereas, said road intersects with the railroad of the Louisville, New Albany & Chicago Railway Company at Orleans and since the completion of said road the same had been in the possession, control, management and operation of the Louisville, New Albany & Chicago Railway Company, said company being the owner of the entire stock issue of this Company:

And whereas, said Louisville, New Albany & Chicago Railway Company of date May 18, 1886, executed and duly acknowledged a further trust agreement collateral to said deed of trust for the purpose of providing further security to the bonds issued and to be issued under said original trust deed and to that end and for that purpose created a lien upon certain corporate stocks, which covers the entire stock of this company so owned by the Louisville, New Albany & Chicago Railway Company, as aforesaid, and

Inasmuch as this Company has no other debts or liabilities than its said stock debt and purposes and is willing for further and additional security to said bonds to vest the legal title to said road in trust in said trustees.

Now, therefore, and in consideration thereof, be it resolved: that John Greenough, vice-president of this company be and he is hereby authorized to convey by such form of conveyance as may be determined by counsel the railroad and all depots, sidetracks, terminals, roadbed, culverts, bridges, appurtenances, properties, rights, privileges and franchises, now owned and held by this company to the Farmers' Loan and Trust Company, of New York, and John H. Barker, of Michigan City, Indiana, in the same trust and sub-

ject to the same conditions and provisions as created and re-
216 cited in said original deed of trust and supplement thereto, and that said trustees shall hold under the conveyance made pursuant to this resolution the railroad, properties and franchises of this company as further security for the payment of said bonds in said trust deed and supplement thereto mentioned and described with the same force and effect as if the conveyance thereof to said trustees had been recited in the conveying clause therein and had been duly conveyed thereby, the corporate seal and its attestation being hereby expressly waived."

Now, therefore, this indenture witnesseth: that the Orleans, West Baden and French Lick Springs Railway Company, party of the first part, pursuant to said resolution and in consideration of the premises and of one dollar to it in hand paid, at and before the execution, acknowledgment and delivery of these presents, the receipt whereof acknowledged, hath granted, bargained, sold, assigned, set over, released, conveyed and confirmed and by these presents, does grant, bargain, sell, assign, set over, release, convey and confirm unto the Farmers' Loan and Trust Company and John H. Barker, as trustees, parties of the second part, and to the survivor of them and to their successor or successors in trust herein and hereby created and declared, all the railway of the party of the first part from French Lick to Orleans, Orange County, about seventeen miles in length, all being in the State of Indiana, together with all lands, rights of way, tracks, lines, rails, bridges, ways, buildings, structures, fences, fixtures, franchises, privileges and rights of the said Orleans, West Baden and French Lick Springs Railway Company, of every kind and nature what-
217 soever, all of which it is hereby covenanted shall issue by way of benefit and advantage to said trustees and by way of better and additional security, for the payment of the bonds issued under the deed of trust executed by the Louisville, New Albany & Chicago Railway Company, as stated, mentioned and set forth in the foregoing resolution.

It is further hereby mutually covenanted and agreed that the said railroad property and the title thereto hereby conveyed shall be held by said trustees and their successor and successors in trust for the uses and purposes herein expressed; that is to say:

First: All the property hereby conveyed shall be deemed to be a part and parcel of the property described in and intended to be conveyed by the said deed of trust of January 1st, 1886, and all

it A to same. provisions of said deed of trust which apply in case of default to the property therein described and referred to shall apply with like and equal force and effect hereto, as if the property herein described had been herein specifically mentioned and conveyed.

Second. This instrument of conveyance is made subject to all the conditions and restrictions expressed and recited in said original deed of trust of date January 1st, 1886, and the acceptance hereof by said trustees shall have like force and effect as if the conveying clause herein contained had been recited therein.

In testimony whereof, the said Orleans, West Baden & French Lick Spring Railway Company has caused the execution hereof as directed by the foregoing resolution and the trustees have
218 caused the due acceptance of the trust created, on the day and year first above written.

THE ORLEANS, WEST BADEN & FRENCH
LICK SPRINGS RAILWAY COMPANY,
By (Sgd.) J. GREENOUGH,
Vice-President.

THE FARMERS' LOAN AND TRUST COMPANY,
By (Sgd.) E. S. MARSTON,
Secretary. (Seal.)

STATE OF NEW YORK. }
CITY AND COUNTY OF NEW YORK. } ss.

Be it remembered that on this 12th day of December, 1896, before me a commissioner of deeds for the State of Indiana, residing in said City, State and County, aforesaid, personally appeared John Greenough, Vice-President of the Orleans, West Baden & French Lick Springs Railway Company, personally known to me to be the Vice-President of said Company and personally known to me to be the real person whose name is subscribed to the foregoing instrument and acknowledged that he in behalf of said railway company and by authority of its Board of Directors has signed and delivered the said instrument as the free and voluntary act of said Railway Company for the uses and purposes therein set forth.

And also at the same time before me personally came Rosewell G. Rolston, President of the Farmers' Loan and Trust Company personally known to me to be the President of said Company, and personally known to me to be the real person whose name is subscribed to the foregoing instrument and acknowledged that he

in behalf of said Trust Company and by authority of its Board of Directors, had signed and delivered the said instrument as the free and voluntary act of the said Trust Company, personally appeared Edwin S. Marston, secretary of said Trust 219 Company, personally known to me to be the secretary of said company, and personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he in behalf of said Trust Company, and by like authority had signed the said instrument and affixed thereto the official seal of said Trust Company as the free and voluntary act of said Farmers' Loan and Trust Company for the uses and purpose therein set forth; that he knew the corporate seal of said company and that the seal so affixed is said corporate seal. Exhibit A to same.

In witness whereof, I have hereunto set my hand and affixed my official seal this 12th day of December, 1896.

[SEAL.] (Sgd.) EDWIN F. COREY,
Commissioner of Deeds for Indiana
in New York.

I hereby certify the above to be a true copy.

(Sgd.) J. A. HILTON,
Assistant Secretary.

EXHIBIT "B."

This indenture, made and entered into on this 12th day of December, 1896, by and between the Bedford & Bloomfield Railroad Company, hereafter called Company, a corporation duly created and existing under the laws of the State of Indiana, party of the first part, and The Farmers' Loan and Trust Company, a corporation duly created and existing under the laws of the State of New York, and John H. Barker, of the State of Indiana, hereinafter called trustees, parties of the second part. Exhibit B to same.

Witnesseth: Whereas, said company holds the legal title to a 220 line from Switz City, in the County of Green to a junction with the Louisville, New Albany & Chicago Railway Company, at Bedford, in the County of Lawrence, in the State of Indiana:

hibit B to same.

And whereas, at a meeting of the Board of Directors of said company duly and legally convened and held, on the 11th day of December, 1896, the said Board being fully authorized by law so to do, did resolve as follows; to-wit:

"Whereas, on the first day of January, 1886, the Louisville, New Albany & Chicago Railway Company executed its certain deed of trust to the Farmers' Loan and Trust Company, of New York, and John H. Barker, of Michigan City, Indiana, to secure certain bonds therein described;

And whereas, said road was constructed as a narrow guage and in its operation connected with the railroad of the Louisville, New Albany & Chicago Railway Company, at Bedford, and after its completion as such and since the day of April, 1896, the said road has been possessed, controlled. managed and operated by said Louisville, New Albany & Chicago Railway Company, it being the sole stock of this company:

And whereas, said Louisville, New Albany & Chicago Railway Company of date May 18, 1886, executed and duly acknowledged the further trust agreement collateral to said deed of trust for the purpose of providing further security for the bonds issued and to be issued under said original trust deed and to that end for that purpose created a lien upon certain corporate stocks which covers the entire stock of this company so owned by the Louisville, New Albany & Chicago Railway Company, as aforesaid:

221 And whereas, said Louisville, New Albany & Chicago Railway Company advanced the money necessary and requisite to convert the said narrow-gauge road into a standard gauge so that the same might unite and intersect with the road and tracks of said Louisville, New Albany & Chicago Railway at Bedford, and this company is indebted to said Louisville, New Albany & Chicago Railway Company therefor, and

Inasmuch as this company has no other debts or liabilities than as aforesaid and now proposes and is willing for the further and additional security of said bonds and for the purpose of fully paying and satisfying all debts due from this company to said Louisville, New Albany & Chicago Railway Company to vest the legal title to this company's road in trust in said trustees.

Now therefore, and in consideration thereof, be it resolved:

that said Greenough, vice-president of this company, be and he is hereby authorized to convey by such form of conveyance as may be determined by counsel, the railroad, and all depots, side tracks, terminals, roadbed, culverts, bridges, appurtenances, properties, rights, privileges and franchises now owned and held by this company to the Farmers' Loan and Trust Company, of New York, and John H. Barker, of Michigan City, Indiana, in the same trust and subject to the same conditions and provisions as created and recited in said original deed of trust and supplement thereto, and that said trustees shall hold under the conveyance made pursuant to this resolution the railroad, properties and franchises of this company as further security for the payment of said bonds in said trust deed and supplement thereto mentioned and described with the same
222 force and effect as if the conveyance thereof to said trustees had been recited in the conveying clauses therein and had been duly conveyed thereby, the same to be executed by said Greenough as such vice-president, without the corporate seal, the said seal and its attestation being hereby expressly waived."

Exhibit B to same.

Now therefore, this indenture witnesseth: that the Bedford and Bloomfield Railroad Company, party of the first part, pursuant to said resolution and in consideration of the premises and of one dollar to it in hand paid at and before the execution, acknowledgment and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, set over, released, conveyed and confirmed and by these presents does grant, bargain, sell, assign, set over, release, convey and confirm unto the Farmers' Loan and Trust Company and John H. Barker, as trustees, parties of the second part, and to the survivor of them and to their successor or successors in trust herein and hereby created and declared, all the railway of the party of the first part, from Switz City in Green County to Bedford in Lawrence County, about forty-one miles in length, all being in the State of Indiana, together with all the lands, rights of way, tracks, lines, rails, bridges, ways, buildings, structures, fences, fixtures, franchises and privileges and rights of the said Bedford and Bloomfield Railroad Company, of every kind and nature whatsoever, all of which it is hereby covenanted shall inure by way of benefit and advantage to said trustee and by way of better and additional security, for the payment of the bonds issued under the deed of trust executed by Louisville, New Albany & Chicago Railway Company, as stated, mentioned and set forth in the foregoing resolution.

223 It is further hereby mutually covenanted and agreed that the said railroad and property and title thereto hereby conveyed

Exhibit B to same.

shall be held by said trustees and their successor and successors in trust for the uses and purposes herein expressed; that is to say:

First. All the property hereby conveyed shall be deemed to be a part and parcel of the property described in and intended to be conveyed by the said deed of trust of January 1st, 1886, and all provisions of said deed of trust which apply in case of default to the property therein described and referred to shall apply like and equal force and effect hereto as if the property herein described had been therein specifically mentioned and conveyed.

Second. This instrument of conveyance is made subject to all the conditions and restrictions expressed and recited in said original deed of trust of date January 1st, 1886, and the acceptance hereof by said trustees shall have like force and effect as if the Habendum clause herein contained had been recited therein.

In testimony whereof, the said Bedford and Bloomfield Railroad Company has caused the execution hereof as directed by the foregoing resolution and the trustees have caused the due acceptance of the trust herein created, on the day and year first above written.

THE BEDFORD & BLOOMFIELD R. R. CO.,
By (Sgd) J. GREENOUGH,
Vice-President.
THE FARMERS' LOAN AND TRUST CO.,
By (Sgd) R. G. ROLSTON.
President.

224

Attest: (Seal.)
(Sgd) E. S. MARSTON,
Secretary.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK. } ss.

Be it remembered, that on this 12th day of December, 1896, before me a commissioner of deeds for the State of Indiana, residing in said city, State and county aforesaid, personally appeared John Greenough, Vice-President of the Bedford and Bloomfield Railroad Company, personally known to me be the Vice-President of said company and personally known to me to be the real person whose name is subscribed to the foregoing instrument and acknowledged that he in behalf of said Railroad Company and by authority of its board of directors has signed and delivered the

said instrument as the free and voluntary act of said railroad company for the uses and purposes therein set forth; and also at the same time personally came Rosewell G. Rolston, President of the Farmers' Loan and Trust Company, personally known to me to be the president of said company, and personally known to me to be the real person whose name is subscribed to the foregoing instrument, and acknowledged that he in behalf of said Trust Company and by authority of its board of directors, has signed and delivered the said instrument as the free and voluntary act of the said Trust Company, for the uses and purposes therein set forth; and also personally appeared before me at the same time Edwin S. Marston, Secretary of said Trust Company, personally known to me to be the secretary of said company, and personally known to me to be the real person whose name is subscribed to the foregoing instrument and acknowledged that he on behalf of said Trust Company, and by like authority had signed the said instrument, and affixed thereto the official seal of said Trust Company as the free and voluntary act of said Farmers' Loan & Trust Company for the uses and purposes therein set forth; that he knew the corporate seal of said company, and that the seal so affixed is said corporate seal. Exhibit B to said

225

In witness whereof, I have hereunto set my hand and affixed my official seal, this 12th day of December, 1896.

(Sgd) EDWIN F. COREY,
[SEAL] Commissioner for Indiana, in New York.

I hereby certify the above to be a true copy.

J. A. HILTO,
Assistant Secretary.

And at the same time on said 24 day of December, 1896, before Honorable William A. Woods, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Petition of Receiver to pay interest coupons.

Comes now the Receiver, by counsel, and files his petition for authority to pay interest coupons due January 1, 1897, in the words following, to-wit:

Your petitioner, as receiver of the railroad property, etc., of the Louisville, New Albany & Chicago Railway Company, respectfully represents:

That the bills of complaint filed in the above entitled cause
226 are to foreclose certain junior mortgages therein mentioned and described, subject to two certain deeds of trust, to-wit: One deed of trust dated July 1st, 1880, executed by the Louisville, New Albany & Chicago Railway Company to John C. New and Washington C. DePauw, trustees, to secure bonds in the sum of three millions dollars, bearing interest at the rate of six per cent. per annum, payable semi-annually on the first days of January and July in each year, and that said deed of trust constitutes a first lien upon the railroad property and franchises therein described, to-wit. upon the railroad of the Louisville, New Albany & Chicago Railway Company, between the City of New Albany in the State of Indiana and Michigan City in the State of Indiana, the same being 188 miles in length. The other deed of trust was executed by the Louisville, New Albany & Chicago Railway Company to John C. New, as trustee, of date August 10, 1881, to secure bonds to be issued thereunder in the aggregate sum of two million three hundred thousand dollars, bearing interest at the rate of six per cent. per annum, payable semi-annually on the first days of February and August in each year, which becomes a first lien upon the Indianapolis Division of the Louisville, New Albany & Chicago Railway Company, as in said deed of trust provided and is more particularly and specifically described; that the interest upon said bonds secured by said two first trust deeds has been promptly paid as the same matured.

That the semi-annual payment of interest upon the first trust deed above mentioned due January 1st, 1897, is $90,000; that at that date there will be sufficient moneys in the hands of your petitioner as such receiver to pay the same and thus prevent a default; that according to the estimate of earnings from this date to
227 February 1, 1897, there should be in the hands of your petitioner as receiver, a sufficient sum to pay and meet the semi-annual interest upon the bonds issued under said second trust deed,

which falls due on said first day of February, 1897; that your petitioner believes that it will be to the best interest of all parties that the interest should be paid upon the said outstanding bonds secured by both of said trust deeds as the same matures. That heretofore said interest has been paid in the following manner, to-wit: The total amount of the interest installment has been deposited on or before the date of the maturity of said interest in the Chase National Bank in the City of New York, and upon the presentation of the coupons by the holders thereof at said bank, said bank has paid the same and canceled the coupons, returning the same to the treasurer of the Louisville, New Albany & Chicago Railway Company. Petition of Receiver to pay interest coupons

Your petitioner as such receiver therefor submits the aforesaid and recommends and prays that an order be entered hereon authorizing your petitioner as such receiver to pay such interest upon all the outstanding bonds secured by said two first trust deeds as the same mature from time to time according to the tenor and effect thereof, with further authority to deposit the amount of each installment of interest as the same matures in the Chase National Bank in the City of New York, to be used by said bank in the payment of said interest coupons as the same may be presented from time to time.

Respectfully submitted,
WM. H. MCDOEL,
Receiver, Louisville, New Albany &
Chicago Railway Company.

E. C. FIELD,
Attorney for Receiver.

228 And at the same time, on said 24 day of December 1896, before Honorable William A. Woods judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Upon the petition and recommendation of Wm. H. McDoel, receiver in the above entitled cause, and the court being fully advised in the premises, orders and directs said receiver, out of the earnings now in his hands or that may come into his hands from the operation of the railroad and property of the Louisville, New Albany & Chicago Railway Company, to pay the interest coupon due January 1st, 1897, upon the bonds secured by the deed of trust Order upon same

der upon same. of date July 1st, 1880, in said petition and recommendation and likewise to pay the interest coupon due Febuary 1st, 1897, upon the bonds secured by the deed of trust of date August 10, 1881, being the interest upon said bonds secured by the two first trust deeds as in said petition and recommendation is more fully and particularly described.

In making said payments said receiver is authorized to deposit the aggregate amount thereof in the Chase National Bank in the City of New York, with due and sufficient authority to said bank to pay said interest, as the coupons evidencing the same are presented by the holders thereof and a receipt from the said Chase National Bank of such payment by said receiver for that purpose shall be sufficient voucher therefore.

229 And afterwards, to-wit: at the November Term of said court on the 13 day of January, 1897, before the Honorable William A. Woods, judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Now on motion of Turner, McClure & Rolston, counsel for the complainants herein, the Farmers' Loan and Trust Company and John H. Barker, and after hearing counsel for the said complainants and G. W. Kretzinger representing the defendant herein, the Louisville, New Albany and Chicago Railway Company and G. W. Kretzinger representing the Orleans, West Baden and French Lick Springs Railway Company, and upon the consent of all said parties,

der making w defendants It is hereby ordered, adjudged and decreed, that the said Orleans, West Baden and French Lick Springs Railway Company and the Bedford and Bloomfield Railroad Company be and the same are hereby made parties defendant in this consolidated cause, as fully as if they had been designated such defendants in the original bill of complaint and in the amended and supplemental bill of complaint herein of said complainants, and the said Orleans, West Baden and French Lick Springs Railway Company and the Bedford and Bloomfield Railroad Company are hereby directed to appear and answer herein within twenty days from the date hereof.

And afterwards, to-wit: at the November Term of said court on the 15 day of January, 1897, in recess of said court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now the receiver by counsel and files his petition to institute condemnation proceedings, &c., which petition is in the words following, to-wit:

230 IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

The Farmers' Loan and Trust Company and John H. Barker, Complainants,
vs.
Louisville, New Albany & Chicago Railway Company, et al.
} Petition.

Petition of Receiver to institute condemnation proceedings.

William H. McDoel, receiver in the above entitled cause represents to the court that heretofore to-wit, he filed a petition as receiver herein therein praying among other things for authority to make a new alignment of track at certain points, for the purposes and to effect the results in said petition set forth; that thereupon this court entered an order fully authorizing petitioner so to do; that in making said new alignment of track it will be necessary at some point to secure a new location therefor; that any new location required out of the right of way now owned by the Louisville, New Albany & Chicago Railway Company whereon the present tracks are laid will be within a short distance of such present occupied right of way, and will be in all cases on the same tracts or subdivisions of lands over which the present right of way and tracks thereon pass; that your petitioner is unable to agree with some of the owners of some of the tracts over which the new locations will be necessary to properly affect and make such new alignment; that your petitioner believes he may be able to use such parts of the present right of way as may be abandoned in exchange for right of way for such new location or alignment, or to reduce damages for the taking of such new locations by condemnation, provided your petitioner had authority from this honorable court to use or release said portions of said old rights of way for that purpose.

Petition of Receiver to institute condemnation proceedings.

231 Your petitioner therefore prays that an order be entered herein authorizing your petitioner to institute in his own name as such receiver or in the name of the Louisville, New Albany & Chicago Railway Company for the use of the estate now held by your petitioner as such receiver, such condemnation proceedings as may be necessary to execute and perform the order authorizing such new location or alignment, and that your petitioner have authority to use such portions of the right of way abandoned for such new alignment in payment for such new rights of way or to reduce the damages therefor, with full authoirty to release or convey the same for that purpose.

WM. H. MCDOEL,
Receiver, Louisville, New Albany and Chicago Railway Co.

G. W. KRETZINGER,
Atty. for Receiver.

And at the same time, on said 15 day of January, 1897, before Honorable William A. Woods, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Order upon same.

Comes now William H. McDoel, Receiver in the above entitled cause and presents his petition praying for an order authorizing him to institute in his own name, as such receiver, or in the name of the Louisville, New Albany & Chicago Railway Company for the use of the estate held by as such receiver, such condemnation proceedings as may be necessary to make the new alignment of tracks pursuant to and as authorized by an order entered in the above cause of date November...., 1896; and after reading the petition and being fully advised it is ordered that William H. McDoel, as such receiver be and he is hereby authorized to bring and institute any condemnation proceedings in the County of Lake and State of Indiana, in his own name or in the name
232 of the Louisville, New Albany & Chicago Railway Company for the use of the estate held by him as such receiver that may be deemed necessary to secure rights of way for making the new alignment of track in the vicinity of Lowell and Cedar Lake as heretofore authorized. Said petitioner is further authorized to use and for that purpose release or quit claim such portions of the present right of way that will be abandoned by such new alignment to secure new locations or rights of way for the purposes aforesaid and such new rights of way when so obtained shall inure to the benefit of the estate.

And afterwards, to-wit: at the November term of said court on the 19 day of January, 1897, before the Honorable William A. Woods, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Come now the defendants, the Louisville, New Albany & Chicago Railway Company, the Orleans, West Baden & French Lick Springs Railway Company, and the Bedford & Bloomfield Railroad Company, by G. W. Kretzinger, their solicitor, and file their answer to the bills herein in the words following, to-wit:

233 CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

The Farmers' Loan and Trust Company and John H. Barker, as Trustees, Complainants, vs. Louisville, New Albany and Chicago Railway Company, The Orleans, West Baden and French Lick Springs Railway Company and the Bedford and Bloomfield Railroad Company, et al, Defendants.	Answer.

Answers.

And now come the Louisville, New Albany & Chicago Railway Company, the Olreans, West Baden and French Lick Springs Railway Company and the Bedford and Bloomfield Railroad Company, defendants in the above entitled cause and consolidated causes, and for answer to the bills of complaint, to-wit; one filed by the Central Trust Company of New York and John H. Stotsenburg, as trustees, against the Louisville, New Albany & Chicago Railway Company; one filed by the Central Trust Company of New York and James Murdock, as trustees, against the Louisville, New Albany & Chicago Railway Company; one filed by the Farmers' Loan and Trust Company and John H. Barker, as trustees, against the Louisville, New Albany & Chicago Railway Company and others, and an amended and supplemental bill filed by the Farmers' Loan and Trust Company and John H. Barker, as trustees, against the Louisville, New Albany & Chicago Railway Company, the Orleans, West Baden and French Lick Springs Railway Company and the Bedford and Bloomfield Railroad Com-

Answers.

pany, et al, to foreclose the mortgages therein mentioned, all
234 of which causes were consolidated into one suit under the above title, to-wit, The Farmers' Loan and Trust Company and John H. Barker, as trustees, against the Louisville, New Albany & Chicago Railway Company, and others; answering say:

1. These defendants, the Louisville, New Albany & Chicago Railway Company, the Orleans, West Baden and French Lick Springs Railway Company and the Bedford and Bloomfield Railroad Company admit that the complainants in said bills and in said amended and supplemental bill were authorized to accept and execute the trusts in the several mortgages mentioned as they have severally alleged.

2. Admit that the Louisville, New Albany & Chicago Railway Company, the Olreans, West Baden and French Lick Springs Railway Company and the Bedford and Bloomfield Railroad Company are existing corporations and had full corporate power to execute the several deeds of trust in the above pleadings mentioned and as averred therein.

3. Admit that the several deeds of trust mentioned in the above bills and supplement thereto were duly executed by these defendants in the manner and for the purpose in said pleadings alleged and that the same became security for the payment of the bonds to be severally issued thereunder upon the properties, railroads and franchises in such several deeds of trust mentioned, and as averred in said bills and supplement.

4. That bonds were issued under said several trust deeds in the number and amount and upon the terms and conditions set forth in said bills and supplement.

235 5. Admit that there were outstanding bonds issued under said several deeds of trust which are secured thereby in the number and amount alleged in said bills and supplement:

6. Admit that the defendant, the Louisville. New Albany & Chicago Railway Company has made default in the payment of interest upon said several series of bonds in the manner, for the period and in the amount alleged in said bills and supplement, as averred:

7. Admit that William H. McDoel was appointed receiver of

Answers.

the railroads and all the properties of these defendants at the date and in the suit alleged, and that he entered into the immediate possession thereof and now holds and operates the same, and that his receivership has been extended to these foreclosure suits as averred:

8. The defendant, the Louisville, New Albany & Chicago Railway Company admits that as averred it is and was at the date of the appointment of the receiver unable to pay all debts asserted and held against it:

9. Admit that the lines of railway and properties in said bills and supplement described have been used and operated as a single system of railroad under one management and defendants aver that this system extends through the State of Indiana and is operated into the State of Kentucky and Illinois for the conduct of interstate business; and avers that the partition of said properties and system into different and independent lines either for operation or by sale under decree foreclosing the deeds of trust covering 236 the entire system if made in parcels would greatly depreciate the value thereof and would bring great loss to the lien holders:

10. These defendants neither admit nor deny any other averment contained in said original bill and supplement, and if the same are material these defendants leave complainants therein to make proof thereof, as this Honorable Court may require:

And these defendants having answered all that it is necessary or material for them to make answer unto, as they are advised by counsel, ask to be hence dismissed with their reasonable costs in this behalf expended.

G. W. KRETZINGER,
Solicitor for Defendants.

And afterwards, to-wit: at the November term of said court, on the 23 day of January, 1897, before the Honorable William A. Woods, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Come now the Central Trust Company and John H. Stotsenburg by counsel and file their answer herein in the words following, to-wit:

Answers.

And come also the Central Trust Company and James Murdock by counsel and file their answer herein in the words following, to-wit:

Now come the defendants, the Central Trust Company of New York, and John H. Stotsenburg, trustees, and The Central Trust Company and James Murdock, trustees, and answering the bill of complaint and the amended and supplemental bill of complaint of the complainants, the Farmers' Loan and Trust Company and John H. Barker, admit the truth of the several allegations con-
237 tained in said bill and amended and supplemental bill, and pray that the court may render such judgment on decree as may be just and equitable.

CENTRAL TRUST COMPANY OF NEW YORK, and
JOHN H. STOTSENBURG, and
CENTRAL TRUST COMPANY OF NEW YORK, and
JAMES MURDOCK,
By BUTLER, NOTMAN, JOLINE & MYNDERSE.
FLOY A. WOODS,
Solicitors.

And at the same time, on said 23 day of January, 1897, before the Honorable William A. Woods, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Intervening Petition of Louisville Trust Co.

This day came the Louisville Trust Company, by St. John Boyle, its counsel, and by leave of Court files its intervening petition herein; also comes the Kentucky National Bank by Alexander P. Humphrey, its counsel, and files by leave of court its intervening petition herein; and upon consideration thereof, it is

Ordered, that the said Louisville Trust Company and the said Kentucky National Bank be and they are hereby admitted to appear in the proceedings in this case, each in its own behalf.

Said intervening petition is in the words following, to-wit:

The Louisville Trust Company by leave of court presents this its intervening petition, and respectfully sets forth that it is a corporation created and existing under and by virtue of the laws of the

State of Kentucky, with authority to hold, acquire, possess and dispose of real and personal property of all kinds, to sue and be sued, and to enjoy, and possess all rights and privileges incident to corporations. Intervening Petition of Louisville Trust Co.

238 The petitioner alleges that heretofore the defendant, the Louisville, New Albany and Chicago Railway Company made and executed its guarantee, and endorsed the same thereon, on a certain issue of negotiable bonds which were made and executed and issued by the Richmond, Nicholasville, Irvine and Beattyville Railroad Company, a corporation thereto duly authorized by the terms of which guarantee the said Louisville, New Albany and Chicago Railway Company guaranteed that the said above named Beattyville Railroad Company would pay the principal and interest of the said bonds according to the tenor thereof, and which said guarantee was duly executed under the corporate seal of said Louisville, New Albany and Chicago Railway Company; and the said Beattyville Railroad Company by its said bonds, undertook and agreed to pay to the bearer thereof the amount of money therein named, with interest thereon at the rate of six per cent. per annum, payable semi-annually, and each of which said bonds was for the principal sum of one thousand dollars ($1,000.)

The petitioner says that it is the owner and holder of one hundred and twenty-five (125) of the said issue of the bond of one thousand dollars ($1,000) each, and upon each of which there is endorsed the said guarantee by the said Louisville, New Albany and Chicago Railway Company, and that no part of the said bonds has been paid, nor has any interest been paid thereon since January first, 1891, but the whole remains due and unpaid.

Petitioner says that the said Louisville, New Albany and Chi-
239 cago Railway Company is a corporation created and existing under and by virtue of the laws of the State of Indiana, and also of the State of Kentucky and by the laws of each of said States was duly authorized to make, and execute the guarantee aforesaid, and that its right and power to do the same has been so adjudged and decreed in a suit brought by the said Louisville, New Albany and Chicago Railway Company against the Ohio Valley Improvement Company in the Circuit Court of the United States for the District of Kentucky and which said judgment is in full force and unreversed.

And your petitioner says that by reason of the premises the

Intervening Petition of Louisville Trust Co.

said Louisville, New Albany and Chicago Railway Company is indebted to it as aforesaid in the sum of one hundred and twenty-five thousand dollars ($125,000) with interest thereon from January first, 1891, and that the said bonds were payable ——— years after date, but payment thereof was secured by a mortgage subject to which the said bonds were issued, and under and in accordance with the provisions thereof the principal of said bonds have become long since due and payable.

Wherefore your petitioner prays that this petition be allowed to be filed and that an order be entered herein authorizing your petitioner to appear in his own behalf and in behalf of all others holding similar claims and take such steps and proceedings as it may be advised by counsel.

And your petitioner prays for all other and such further orders as may be meet and proper.

ST. JOHN BOYLE,
Atty.

240 And at the same time, on said 23 day of January, 1897, before Honorable William A. Woods, judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Decree.

This consolidated cause came on to be heard at this term upon the bill of complaint of the complainants the Farmers' Loan and Trust Company and John H. Barker, and the amended and supplemental bill of complaint of said complainants, and upon the bill of complaint of the complainants the Central Trust Company of New York and John H. Stotsenburg, and upon the bill of complaint of the complainants Central Trust Company of New York and James Murdock, and upon the exhibits to said several bills and upon the answers of the defendants thereto, and upon the several orders, papers and proceedings in this cause, and was argued by counsel, and thereupon, upon consideration thereof, it was found by the court that all and singular the material allegations of the bills are true as therein alleged and the equity of this cause is with the complainants in said several bills; and it was

Ordered, adjudged and decreed, that the mortgage set forth in the bill of complaint herein of the complainants the Farmers'

Loan and Trust Company and John H. Barker made by the defendant the Louisville, New Albany and Chicago Railway Company to said complainants, and bearing date the 1st day of January, 1886, is a valid and subsisting mortgage and constitutes a lien upon the mortgaged premises, property and franchises which are described in said mortgage as follows (the words "party of the first part" being used to designate the said defendant Louisville, New Albany and Chicago Railway Company): Decree.

"All the railway of the party of the first part in the City of Louisville, in the State of Kentucky, and extending from New Albany, on the Ohio river, to Michigan City in the State of Indiana, and from the City of Chicago, in the State of Illinois, to the Indiana State line, under a leasehold right, and from said State line to the City of Indianapolis, in the State of Indiana, including the railway lying and being in all of said cities, and terminal rights and facilities and approaches thereto, the same being about four hundred and seventy-five miles in length, and running through the Counties of Floyd, Clark, Washington, Orange, Lawrence, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Stark, Laport, Marion, Hamilton, Boone, Clinton, Carroll, Jasper, Newton and Lake, in said State of Indiana, and Jefferson County in said State of Kentucky, and Cook County in said State of Illinois, and also all branches thereof, including all the property of every sort or nature now owned by said Railway Company, and all that it may in the future acquire for the purposes and connected with or appertaining to the railroads or railways above mentioned and described, to-
241 gether with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges and rights of the railway company, and also all locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured and unmanufactured materials, coal, wood and supplies of every kind, belonging or appertaining to the railway company, also all the tolls, incomes, issues and profits, arising out of the said property, and all rights to receive and recover the same, also all estate, right, title and interest of the party of the first, in and to any and all real estate belonging to the said party of the first part, also all leasehold lands, with the buildings thereon erected, it being the true intent and meaning of these presents, that the said Railway Company shall and doth convey to the said Trustees, all and all manner of franchises of every kind and description, however derived and wherever situate, all and all manner of real estate or interest therein, wherever such real estate may be

ecree.

situate, and all and all manner of personal property, of whatever nature or description the same may be, at the date of these presents owned or possessed by the said railway company, or which may at any time hereafter during the continuance of this trust be acquired by the said railway company for purposes connected with or appertaining to the railroads or railways above mentioned or described; and also all choses in action, of every kind and description, including bills receivable, book accounts, traffic balances, all books of record and all accounts of every kind and description, all papers, maps, inventories and documeuts in any wise referring or relating to the property or franchises hereby conveyed; and also all franchises and property and all personal rights or interest in any franchises or property of every kind or description, real, personal or mixed, and wherever the same may be situate, that may at any time, before or after the date of this indenture, be acquired by or for the said Railway Company, for purposes connected with or appertaining to said railroad or railways; all of which it is hereby covenanted shall inure by way of accretion to the benefit and advantage of said Trustees, and by way of further and better security."

That said mortgage also constitutes a first lien upon 9,999 shares of the capital stock of the Chicago and Western Indiana Railroad Company, of the par value of $100 each; 2,399 shares of the capital stock of the Belt Railway Company, of Chicago, of the par value of $100 each; 11,990 shares of the capital stock of the Bedford and Bloomfield Company, of the par value of $50 each; and 2,990 shares of the Orleans, West Baden and French Lick Springs Railway Company, of the par value of $100 each; all which said corporate shares have been deposited with and are held by The Farmers' Loan and Trust Company, one of said complainants, as trustee under the said Mortgage of January 1st, 1886, under and by virtue of a certain collateral trust agreement dated May 18, 1886, whereby said corporate shares are deposited and pledged as further security for the bonds issued under the said mortgage of January 1st, 1886.

It was also further ordered, adjudged and decreed that the lien of said mortgage dated January 1st, 1886, is subsequent and subsidiary to the liens of two other prior mortgages made by said defendant Railway Company; namely, a mortgage dated July 1st, 1880, made to John C. New and Washington C. DePauw, as trustees, covering a portion of the above-described premises, and a mortgage dated August 10th, 1881, and to John C. New, as

trustee, covering another portion of the above-described premises; Decree.
but the lien of the said mortgage dated January 1st, 1886,
242 made to said complainants herein as aforesaid, is prior to any other lien upon the property of said defendant Railway Company in favor of any party to this cause, except as herein stated.

It was also further ordered, adjudged and decreed that, as further security for the bonds secured by said mortgage dated January 1st, 1886, the defendant, The Orleans, West Baden and French Lick Springs Railway Company (the said corporation whose stock was owned by the defendant, Louisville, New Albany and Chicago Railway Company and was expressly pledged as further security, as aforesaid, for the bonds issued under said mortgage of January 1st, 1886), on or about December 12th, 1896, made and duly executed a certain instrument in writing in the way of a confirmatory mortgage or deed of trust to said complainants as trustees of and under said mortgage of January 1st, 1886, and therein and thereby granted and conveyed to said complainants, as such trustees, all the railway of said Orleans, West Baden and French Lick Springs Railway Company from French Lick to Orleans, Orange County, about 17 miles in length, all being in the State of Indiana, together with all lands, rights of way, tracks, lines, rails, bridges, ways, buildings, structures, fences, fixtures, franchises, privileges and rights of the said Orleans, West Baden and French Lick Springs Railway Company, of every kind and nature whatsoever, it being in said conveyance covenanted that said premises and property should inure by way of benefit and advantage to said trustees, and by way of better and additional security for the payment of the bonds issued under said mortgage dated January 1st, 1886; and that thereby all the said property included in said conveyance of December 12th, 1896, became and was and now is part and parcel of the property covered by said mortgage of January 1st, 1886.

It was also further ordered, adjudged and decreed that as further security for the bonds secured by said mortgage dated January 1st, 1886, the defendant The Bedford and Bloomfield Railroad Company (the said corporation whose stock was owned by the defendant Louisville, New Albany and Chicago Railway Company and was expressly pledged as further security, as aforesaid, for the bonds issued under said mortgage of January 1, 1886), on or about December 12th, 1896, made and duly executed a certain instrument in writing in the way of a confirmatory mortgage or deed of trust

Decree.

to said complainants as trustees of and under said mortgage of January 1st, 1886, and therein and thereby granted and conveyed unto said complainants as such trustees all the railway of the said Bedford and Bloomfield Railroad Company from Switz City in Green County, to Bedford in Lawrence County, about 41 miles in length, all being in the State of Indiana, together with all the lands, rights of way, tracks, lines, rails, bridges, ways, buildings, structures, fences, fixtures, franchises and privileges and rights of said Bedford and Bloomfield Railroad Company of every kind and nature whatsoever, it being expressly covenanted that said premises and property should inure by way of benefit and advantage to said trustees and by way of better and additional security for the payment of the bonds issued under said mortgage dated January 1st, 1886; and that thereby all the said property included in said last mentioned conveyance of December 12th, 1896, became and was and now is part and parcel of the property covered by said mortgage dated January 1st, 1886.

It was also further ordered, adjudged and decreed that there have been issued and are now outstanding and secured by said mortgage dated January 1st, 1886, 4,700 of the bonds mentioned and described therein for $1,000 each, aggregating $4,700,000 of principal, together with coupons for interest thereunto appertaining, and that default was made in the payment of interest
243 due upon said mortgage on the 1st day of October, 1886.

It was also further ordered, adjudged and decreed that the mortgage set forth in the bill of complaint herein of the complainants the Central Trust Company of New York and John H. Stotsenburg, made by the defendant Louisville, New Albany and Chicago Railway Company to said complainants bearing date May 1st, 1890, is a valid and subsisting mortgage and constitutes a lien upon the mortgaged premises, property and franchises described in said mortgage as follows (the words "party of the first part" and "Railway Company," in said description, being used to designate the defendant Lousiville, New Albany and Chicago Railway Co.):

"All the present and in future to be acquired railway system and property of the said party of the first part, of every kind and nature, and however owned, held, leased or enjoyed, together with all the equipment, appurtenances and franchises now owned or at any time hereafter to be acquired by it, being more particularly described as follows: All the present line of railway ex-

tending from New Albany, Indiana, to Michigan City, in the same State, and also from Indianapolis, Indiana, to a point on the State line between Indiana and Illinois, about twenty miles southeast of the City of Chicago, Illinois, and also its proprietary and owned line of railroad, called the Bedford and Bloomfield Railroad, extending from Bedford to Switz City, in Indiana, and also its other proprietary and owned line of railroad, called the Orleans, West Baden and French Lick Springs Railroad, extending from Orleans to French Lick, Indiana, and also all its lands, station buildings, tracks and terminal faciliites in the City of Louisville, Kentucky, and also all its rights, interest, proprietary and leasehold estate and terminal facilities in the franchises, property, tracks and station buildings of the Chicago and Western Indiana Railroad Company, and in the Belt Railway Company of Chicago, in the City of Chicago, or elsewhere in the State of Illinois; and also all its real estate, trackage, leasehold and contract rights and terminal properties, stations, sidings and franchises in the City of Indianapolis, Indiana, and also all its leasehold and contract rights, trackage and terminal facilities vested in the party of the first part by virtue of its certain written contracts with the Jeffersonville, Madison and Indianapolis Railroad Company, the Pennsylvania Company, and the Louisville Bridge Company, whereby the trains and traffic of the said party of the first part are moved and handled between the City of New Albany, Indiana, and the City of Louisville, Kentucky, the before-mentioned system of railroads owned by the said party of the first part and exclusive of tracks leased and operated by it, being about five hundred and twelve miles in length, and situate in the Counties of Floyd, Clark, Washington, Orange, Lawrence, Greene, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, La Porte, Marion, Hamilton, Boone, Clinton, Carroll, Jasper, Newton and Lake, in the State of Indiana, and Cook County, in the State of Illinois, and Jefferson County, in the State of Kentucky; and also all other railroads, extensions and branch lines which the railway company, 244 party of the first part, may at any time hereafter create, own or acquire, whether by construction, purchase, consolidation or otherwise, whether within the State of Indiana, or in any other State, including and conveying by these presents all the property of every sort or nature, real, personal and mixed, now owned by said railway company and all that it may in the future add, construct or acquire, for the purposes of and connected with or appertaining to the railroads or railways above mentioned and described, whether now owned or hereafter to be constructed or acquired,

Decree.

ecree. together with all the lands, tracks, lines, rails, bridges, ways, buildings, shops, tanks, piers, wharves, structures, erections, turntables, fences, walls, fixtures, franchises, privileges and rights of the railway company, and also all locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured and unmanufactured materials, coal, wood and supplies of every kind belonging or appertaining to the railway company; also all the tolls, incomes, issues and profits, arising out of the said property and its operation, and all rights to receive and recover the same, also all estate, right, title and interest of the party of the first part in and to any and all real estate belonging to said party of the first part; also all leasehold lands, with the buildings thereon erected, it being the true intent and meaning of these presents that the said railway company, party of the first part, shall and doth convey to the said trustees all and all manner of franchises of every kind and description, however derived and wherever situate, all and all manner of real estate or interest therein, wherever such real estate may be situate, and all and all manner of personal property, of whatever nature or description the same may be, at the date of these presents owned or possessed by the said railway company, or which may, at any time hereafter, during the continuance of this trust, be acquired by the said railway company for purposes connected with or appertaining to the railroads or railways above mentioned or described, or intended to be hereby conveyed, whether now in existence or at any time hereafter to be constructed or acquired, whether within or without the State of Indiana; and also all choses in action of every kind and description, including bills receivable, book accounts, traffic balances, all books of record and all accounts of every kind and description, all papers, maps, inventories and documents in any wise referring or relating to the property or franchises hereby conveyed; and also all franchises and property and all personal rights or interest in any franchises or property of every kind and description, real, personal or mixed, and wherever the same may be situate, that may, at any time, before or after the date of this indenture, be acquired by or for the said railway company, for purposes connected with or appertaining to said railroads or railways, either now owned or hereafter to be acquired, all of which it is hereby covenanted shall inure, by way of accretion, to the benefit and advantage of said trustees and by way of further and better security for the bonds to be issued hereunder; it being intended and hereby expressly covenanted that the lien of this indenture shall embrace and bind all railroads, real and personal property, choses in action, contract rights and franchises which the said railway company now owns, or at any time hereafter may

own, as fully and to the same extent as if all such property were now in existence and owned by the said railway company, and were specifically described herein and conveyed hereby." Decree.

That said mortgage also constitutes a lien upon said shares of stock deposited with and held by said Farmers' Loan and
245 Trust Company under and by virtue of said agreement dated May 18th, 1886, subject only to the lien of said Farmers' Loan and Trust Company and said John H. Barker, as trustees under said mortgage dated January 1st, 1886; and that the lien of said mortgage of May 1st, 1890, upon all of said property, is subsequent and subordinate only to the lien of said mortgage of January 1st, 1886, and to the liens of said prior mortgages hereinbefore mentioned upon the properties covered by said prior mortgages respectively.

It was also ordered, adjudged and decreed that there have been issued and are now outstanding and secured by said mortgage dated May 1st, 1890, 2,800 of the bonds mentioned and described therein for $1,000 each, aggregating $2,800,000 of principal, together with coupons for interest thereto annexed, and that default was made in the payment of interest due upon said mortgage on the 1st day of November, 1896.

It was also ordered, adjudged and decreed that the mortgage set forth in the bill of complaint herein of the complainants the Central Trust Company of New York and James Murdock, made by the defendant Louisville, New Albany and Chicago Railway Company to said complainants, and bearing date the 1st day of September, 1894, is a valid and subsisting mortgage and constitutes a lien upon the mortgaged premises, property and franchises described in said mortgage as follows (the words "party of the first part" and "railway company," in said description, being used to designate the defendant Louisville, New Albany and Chicago Railway Company):

"All the railway system and property of the said party of the first part, of every kind and nature, and however owned, held, leased or enjoyed, together with all the equipment, appurtenances and franchises thereunto appertaining, being more particularly described as follows: All the present line of railway extending from New Albany, Indiana, to Michigan City, in the same State, and also from Indianapolis, Indiana, to a point on the State line between Indiana and Illinois, about twenty miles southeast of the city of

Decree. Chicago, Illinois, and also its proprietary and owned line of railroad, called the Bedford and Bloomfield Railroad, extending from Bedford to Switz City, in Indiana, and also its other proprietary and owned line of railroad, called the Orleans, West Baden and French Lick Springs Railroad, extending from Orleans to French Lick, Indiana, and also all its lands, station buildings, tracks and terminal facilities in the city of Louisville, Kentucky, and also all its rights, interest, proprietary and leasehold estate and terminal facilities in the franchises, property, tracks and station buildings of the Chicago and Western Indiana Railroad Company, and in the Belt Railway Company of Chicago, in the city of Chicago, or elsewhere in the State of Illinois; and also all its real estate, trackage, leasehold and contract rights and terminal properties, stations, sidings and franchises in the city of Indianapolis, Indiana, and also all its leasehold and contract rights, trackage and terminal facilities vested in the party of the first part by virtue of its certain written contracts with the Jeffersonville, Madison and Indianapolis Railroad Company, the Pennsylvania Company, and the Louisville Bridge Company, whereby the trains and traffic of the said party of the first part are moved and handled between the city of New Albany, Indiana, and the city of Louisville, Kentucky, the before-mentioned system of railroads owned by the said party of the first part and exclusive of tracks leased and operated by it, being about five hundred and twelve miles in
246 length, and situate in the Counties of Floyd, Clark, Washington, Orange, Lawrence, Greene, Monroe, Owen, Putnam, Montgomery, Tippecanoe, White, Pulaski, Starke, La Porte, Marion, Hamilton, Boone, Clinton, Carroll, Jasper, Newton and Lake, in the State of Indiana, and Cook County, in the State of Illinois, and Jefferson County, in the State of Kentucky; including and conveying by these presents all the property of every sort or nature, real, personal and mixed, now owned by said railway company for the purposes of and connected with or appertaining to the railroads or railways above mentioned and described, together with all the lands, tracks, lines, rails, bridges, ways, buildings, shops, tanks, piers, wharves, structures, erections, turntables, fences, walls, fixtures, franchises, privileges and rights of the railway company, and also all locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured and unmanufactured materials, coal, wood and supplies of every kind belonging or appertaining to the railway company; also all the tolls, incomes, issues and profits, arising out of the said property and its operation, and all rights to receive and recover the same, also all estate, right, title and interest of the party of the first part in and to any and all real estate belonging to said party of the first part; also all leasehold lands, with the build-

ings thereon erected, it being the true intent and meaning of these presents that the said railway company, party of the first part, shall and doth convey to the said trustees all and all manner of franchises of every kind and description, however derived and wherever situate, all and all manner of real estate or interest therein, wherever such real estate may be situate, and all and all manner of personal property, of whatever nature or description the same may be, at the date of these presents owned or possessed by the said railway company, whether within or without the State of Indiana; and also all choses in action of every kind and description, including bills receivable, book accounts, traffic balances, all books of record and all accounts of every kind and description, all papers, maps, inventories and documents in anywise referring or relating to the property or franchises hereby conveyed; and also all franchises and property and all personal rights or interest in any franchises or property of every kind and description, real, personal or mixed, and wherever the same may be situate, that may, at any time, before or after the date of this indenture, be acquired by or for the said railway company, for purposes connected with or appertaining to said railroads or railways, hereby conveyed, all of which it is hereby covenanted shall inure, by way of accretion, to the benefit and advantage of said trustees, and by way of further and better security for the bonds to be issued hereunder; it being intended and hereby expressly covenanted that the lien of this indenture shall embrace and bind all railroads, real and personal property, choses in action, contract rights and franchises which the said railway company now owns, as fully and to the same extent as if all such property were specifically described herein and conveyed hereby." Decree

That said mortgage also constitutes a lien upon said shares of stock deposited with and held by said Farmers' Loan and Trust Company under and by virtue of said agreement dated May 18th, 1886, subject only to the lien of said Farmers' Loan and Trust Company and said John H. Barker as trustees under said mortgage dated January 1st, 1886, and to the lien of said Central Trust Company of New York and said John H. Stotsenburg as trustees under said mortgage dated May 1st, 1890; and that the lien of said mortgage dated September 1st, 1894, upon all of said prop-
247 erty above mentioned and described is subsequent and subordinate only to the lien of said mortgage dated January 1st, 1886, and to the lien of said mortgage dated May 1st, 1890, and to the liens of said prior mortgages above mentioned upon the properties covered by said prior mortgages respectively.

That said mortgage dated September 1st, 1894, also includes

Decree.

and embraces certain other property consisting of five certain parcels of railroad equipment, that is to say:

1. 300 box cars built by the Haskell & Barker Car Company, costing $140,010.

2. 250 flat cars built by the Haskell & Barker Car Company, costing $96,250.

3. 200 coal cars and 50 stock cars built by the Haskell & Barker Car Company, costing $102,750.

4. 300 box cars and 250 flat cars built by Oliver Adams, agent, costing $293,224.

5. 1,000 flat cars built by the Haskell & Barker Car Company, costing $370,000.

All of said equipment included in said five parcels being marked "Owned by Central Trust Company of New York, Trustee Louisville, New Albany and Chicago Railway Company Equipment Mortgage."

And that said mortgage dated September 1st, 1894, is a first lien upon said railroad equipment, and prior to any other lien thereon in favor of any party to this cause.

It was also further ordered, adjudged and decreed, that the premises and property covered by said mortgage, dated January 1st, 1886, and said mortgage dated May 1st, 1890, and said mortgage dated September 1st, 1894, are the same and identical, with the exception that said mortgage dated January 1st, 1886, covers property not covered by said other mortgages, and consisting of the right, title and interest of said Orleans, West Baden and French Lick Springs Railway Company, and of said Bedford and Bloomfield Railroad Company, conveyed and mortgaged by said companies to the complainants Farmers' Loan and Trust Company and John H. Barker, as trustees, by said conveyances dated December 12, 1896; and with the exception that said mortgage dated September 1st, 1894, covers and is a first lien on said five parcels of railroad equipment, and said other mortgages only cover and embrace the right, title and interest of the defendant Louisville, New Albany and Chicago Railway Company in and to said five parcels

of railroad equipment, subject to the lien of said mortgage dated September 1st, 1894. Decree.

It was also ordered, adjudged and decreed that there have been issued and are now outstanding and secured by said mortgage dated September 1st, 1894, 709 of the bonds mentioned and described therein for $1,000 each, aggregating $709,000 of principal, together with coupons for interest thereunto appertaining, and that default was made in the payment of interest due upon said mortgage on December 1st, 1896.

It was also ordered, adjudged and decreed that the amount due upon the said bonds secured by said mortgage dated January 1st, 1886, which is in default and which is now due and payable, is as follows:

Interest due October 1st, 1896	$141,000 00
Interest thereon to the date of this decree	2,638 06
Total	$143,638 06

248 That the amount to become due upon the said bonds secured by said mortgage dated January 1st, 1886, and which is unpaid, is $4,700,000 with interest at six per cent. per annum from October 1st, 1896.

That the amount due upon the said bonds secured by said mortgage dated May 1st, 1890, which is in default and which is now due and payable is as follows:

Interest due November 1st, 1896	$ 70,000 00
Interest thereon to the date of this decree	959 68
Total	$ 70,959 68

That the amount to become due upon the said bonds secured by said mortgage dated May 1st, 1890, and which is unpaid, is $2,800,000 with interest at five per cent. per annum from November 1st, 1896.

That the amount due upon the said bonds secured by said mortgage dated September 1st, 1894, which is in default, and which is now due and payable, is as follows:

Decree.

Interest due December 1st, 1896	$ 17,725 00
Interest thereon to the date of this decree	154 38
Total	$ 17,879 38

That the amount to become due upon the said bonds secured by said mortgage dated September 1st, 1894, and which is unpaid, is $709,000 with interest at five per cent. per annum from December 1st, 1896.

It was also ordered, adjudged and decreed that the defendant Louisville, New Albany and Chicago Railway Company shall within ten days after the entry of this decree pay or cause to be paid to the complainants The Farmers' Loan and Trust Company and John H. Barker, or to the Clerk of this Court, for the use and benefit of the holders of the outstanding bonds secured by said mortgage dated January 1st, 1886, and of the unpaid interest warrants or coupons appertaining thereto, the sum of $143,638.06 in gold coin of the United States of America, with interest thereon from the date of entry of this decree to the date of payment, being the sum adjudged to be due and payable by said defendant, and secured by said mortgage dated January 1st, 1886; and that within the same time the defendant Louisville, New Albany and Chicago Railway Company pay or cause to be paid to the complainants Central Trust Company of New York and John H. Stotsenburg, or to the Clerk of this Court, for the use and benefit of the holders of the outstanding bonds of said defendant secured by said mortgage dated May 1st, 1890, and of the unpaid interest warrants or coupons appertaining thereto, the sum of $70,959.68 in gold coin of the United States of America, with interest thereon from the date of the entry of this decree to the date of payment, being the sum adjudged to be due and payable by said defendant and secured by said mortgage dated May 1st, 1890; and that within the same time the defendant Louisville, New Albany and Chicago Railway Company pay, or cause to be paid, to the complainants Central Trust Company of New York and James Murdock, or to the Clerk of this Court, for the use and benefit of the holders of the outstanding bonds of said defendant secured by said mortgage dated September 1st, 249 1894, and of the unpaid interest warrants or coupons appertaining thereto, the sum of $17,879.38 in gold coin of the United States of America, with interest thereon from the date of the entry of this decree to the date of payment, being the sum adjudged to be due and payable by said defendant and secured by said mortgage dated September 1st, 1894.

It was also ordered, adjudged and decreed that, unless the said payment, as hereinbefore directed with respect to said bonds secured by said mortgage dated January 1st, 1886, shall be made within the time directed as aforesaid, said mortgage be foreclosed and all property rights and interests conveyed thereby and upon which said mortgage is a lien, as the said property is hereinbefore particularly described be sold as hereinafter directed, and that under and by said sale all equity of redemption of the defendants, and of any and all persons claiming by, through or under the said defendants, or represented by any of the parties to this suit (except the interests of the Central Trust Company of New York and James Murdock, as trustees under said mortgage dated September 1, 1894, in and to said five parcels of railroad equipment hereinbefore mentioned and described) of, in and to said mortgaged premises, property, rights and franchises, and every part and parcel thereof embraced or included, or intended to be included, in the said mortgage, be foreclosed, and cut off and forever barred; that unless the said payment, as hereinbefore directed with respect to said bonds secured by said mortgage, dated May 1st, 1890, shall be made within the time directed as aforesaid, the said mortgage be foreclosed, and all property, rights or interests conveyed thereby, and upon which said mortgage is a lien, as the said property is hereinbefore particularly described, and including all material and supplies on hand at the time of the sale purchased or held by the receiver, be sold as is hereinafter directed, and that under and by said sale all equity of redemption of the defendants, and of any and all persons claiming by, through or under them, or represented by any of the parties to this suit (excepting the interest of The Farmers' Loan and Trust Company and John H. Barker, as trustees under said mortgage dated January 1st, 1886, and excepting the interests of the Central Trust Company of New York and James Murdock, as trustees under said mortgage dated September 1, 1894, in and to said five parcels of railroad equipment hereinbefore mentioned and described), of, in and to said mortgaged premises, property, rights and franchises, and every part and parcel thereof, embraced or included, or intended to be included, in the said mortgage, be foreclosed and cut off and forever barred; that, unless the said payment, as hereinbefore directed with respect to said bonds secured by said mortgage dated September 1st, 1894, shall be made within the time directed as aforesaid, the said mortgage be foreclosed, and all property, rights or interests conveyed thereby, and upon which said mortgage is a lien as the said property is hereinbefore particularly described, be sold as hereinafter directed, and that under and by said sale all Decree.

cree. equity of redemption of the defendants and of any and all persons claiming by, through or under them, or represented by any of the parties to this suit (excepting the interests of The Farmers' Loan and Trust Company and John H. Barker, as trustees under said mortgage, dated January 1st, 1886, and of the Central Trust Company of New York and John H. Stotsenburg, as trustees under said mortgage, dated May 1st, 1890, in and to that portion of the property covered by said mortgage dated September 1st, 1894, upon which said mortgages, dated respectively January 1st, 1886, and May 1st, 1890, are prior liens as hereinbefore adjudged), 250 of, in and to said mortgaged premises, property, rights and franchises and every part and parcel thereof embraced or included, or intended to be included, in the said mortgage, be foreclosed and cut off and forever barred. That the foreclosure above directed shall not nor shall either or any of them affect the prior liens of said mortgages hereinbefore mentioned made by said Louisville, New Albany and Chicago Railway Company, the one dated July 1st, 1880, and made to John C. New and Washington C. DePauw, as trustees, and the other dated August 10th, 1881, and made to John C. New as trustee.

It was also adjudged and decreed that the railway properties covered by said respective mortgages constitute one railroad system, and cannot be sold in separate parcels without injury to the rights of the creditors and of the parties in interest.

It was also ordered, adjudged and decreed that the property covered by said mortgage dated January 1st, 1886, and the property covered by said mortgage dated May 1, 1890, and the property covered by said mortgage dated September 1st, 1894, shall, subject to the provisions aforesaid, and in default of the payment of the sums hereinbefore found to be due and directed to be paid, be sold without valuation, appraisement or redemption at public auction to the highest bidder or bidders on the mortgaged premises at the Round House of the defendant Railway Company near the Belt Line junction in the City of Indianapolis, Indiana, on a day and at an hour to be fixed by the special master herein appointed, in his advertisement of sale, such day and hour to be fixed in accordance with the request of the solicitors for the complainants named in the bills filed herein for the foreclosure of said respective mortgages, and previous notice of the time, place and terms of said sale shall be given by publication of a brief general advertisement referring to this decree for further particulars and for a more specific description of the property herein ordered to be sold,

which advertisement shall be published at least once in each week for the term of four weeks preceding the date of the sale in four newspapers of general circulation, one published in New Albany, Indiana; one in Indianapolis, Indiana; one in Chicago, Illinois, and one in the City of New York. The said special master may, at the request of the complainants named in the bills filed herein for the foreclosure of said several mortgages, or at the request of the solicitors for such complainants, adjourn or postpone said sale, and may without further notice proceed with said sale on any day to which the said sale may have been thus adjourned. The special master may give such further notice of sale in addition to the notice before described as he may think proper or as the said complainants may request. The complainants or any bondholder or bondholders may bid and purchase at said sale. Decree.

It was also ordered, adjudged and decreed that the said sale shall be conducted as follows, that is to say: Said special master shall first offer for sale, separately and in one parcel, the property which is covered by said mortgage dated January 1st, 1886, as hereinbefore found and decreed (upon which said property said mortgage dated May 1st, 1890, and said mortgage dated September 1st, 1894, are subsequent liens), the same being all of the property hereinbefore mentioned and described, excepting only said five parcels of railroad equipment, but including said shares of capital stock deposited with said Farmers' Loan and Trust Company and the said property conveyed to said Farmers' Loan and Trust Company by said Orleans, West Baden and 251 French Lick Springs Railway Company and said Bedford and Bloomfield Railroad Company. Said Special Master shall next offer for sale, separately and in one parcel, the property which is covered by said mortgage dated September 1st, 1894, and upon which said mortgage is a first lien, the same being said five parcels of railroad equipment hereinbefore mentioned and described. In making such sale the said Special Master shall accept no bid for the property so to be first offered for sale (being all the property hereinbefore described, except said five parcels of railroad equipment) for a sum less than $2,500,000, nor from any bidder who shall not place in his hands or deposit with him, at the time of making the bid, as a pledge that such bidder will make good his bid, if accepted by the Court, the sum of $25,000 in money or certified check. In making such sale the said Special Master shall accept no bid for the said five parcels of railroad equipment from any bidder for a sum less than $500,000, nor from any bidder who shall not place in his hands or deposit with him at the time of mak-

ecree. ing the bid as a pledge that such bidder will make good his bid if accepted by the court, the sum of $5,000 in money or certified check. After having offered said property separately as hereinbefore provided, said Special Master shall then offer for sale the entire property covered by said mortgage dated January 1st, 1886, and said mortgage dated May 1st, 1890, and said mortgage dated September 1st, 1894, including said five parcels or railroad equipment, as one parcel without valuation, appraisement or redemption, and if the highest bid received by him for the same shall exceed the aggregate amount of the highest bids for the two parcels when offered separately, then the whole shall be struck off and sold as an entirety to the person making such bid for the whole, and the proceeds of sale shall be divided into two parts in proportion to the amounts bid separately on said properties and distributed in the same manner as if said properties had been sold separately. Said Special Master shall accept no bid for the property as an entirety from any bidder for a sum less than $3,000,000, nor from any bidder who shall not place in his hands or deposit with him at the time of making the bid as a pledge that such bidder will make good his bid if accepted by the Court, the sum of $30,000 in money or certified check.

It was also ordered, adjudged and decreed that of the price for which said property shall be sold there shall be paid in cash at the time of sale the cash deposit or deposits hereinbefore required, which shall be received as a part of the purchase price, and also at the same time, and from time to time thereafter, such further portions of said purchase price shall be paid in cash as the Court may direct in order to meet the expenses of this suit and the suits consolidated herein, and such Receiver's indebtedness as shall have matured prior to the confirmation of sale herein, and to pay such claims, if any, against the mortgaged property as the court may adjudge to be prior in equity to the said mortgages. All sums of money received by said Special Master shall be paid by him into the registry of the Court. The Court reserves the right to reject any bid and to resell said premises and property upon the failure of any purchaser for twenty days to comply with any order of the Court requiring payment. The balance of the purchase price not required to be paid in cash may either be paid in cash or the purchaser may satisfy and make good said balance of his bid, in whole or in part, by paying over and surrendering outstanding bonds and overdue coupons appertaining thereto,
252 secured by said mortgage, dated January 1st, 1886, or outstanding bonds and overdue coupons appertaining thereto,

secured by said mortgage, dated May 1st, 1890, or outstanding bonds and overdue coupons appertaining thereto, secured by said mortgage, dated September 1st, 1894, said bonds and coupons being received at such price or value as shall be equivalent to the amount that the holders thereof would be entitled to receive thereon in case the entire purchase price were paid in cash. All bonds and coupons that may be used to make such payment shall be surrendered to the Special Master and cancelled if the whole amount due thereon is applied upon the purchase price; but if less than the whole amount is applied, then the amount so applied shall be stamped or written upon said bonds and coupons which shall then be returned to the holder. The foregoing provisions shall be applicable whether the said properties be sold in separate parcels or as an entirety. As soon as any sale or sales shall have been made by the Special Master in pursuance of this decree he shall report the same to this court for confirmation, further certifying to the court compliance by the purchaser or purchasers with the conditions of sale as hereinbefore prescribed. If any bid shall be accepted by the court, and the person making the same shall fail to comply with all the conditions of sale and all orders of the court in respect thereto, the sum deposited by the bidder shall be forfeited and shall be applied as the court may direct. Decree.

It was also ordered, adjudged and decreed that the purchaser or purchasers of any parcel at such sale shall, as part of the consideration for such sale, and in addition to the price bid, take the property purchased upon the express condition that he or they, or his or their assigns approved by the court will notwithstanding pay off and satisfy any and all receiver's indebtness which shall not be paid by the receiver herein out of the income and earnings of the mortgaged property, or which shall not be paid out of the proceeds of sale as hereinafter directed; and also any and all claims heretofore filed, or which may hereafter be filed within a period to be limited by an order of this court, in this cause or either of the causes consolidated herein in respect of the parcel so purchased, but only when and as the court shall allow such claims and adjudge the same to be prior in lien to the mortgages foreclosed in this suit or either of them, and shall determine the parcel in respect of which such claims shall be payable, and in accordance with the order or orders of the court allowing such claims and adjudging with respect thereto; and the purchaser or purchasers or their approved assigns shall be entitled to appeal from any and all orders or decrees of the court in respect to such claims or any of them, and shall have all the rights in respect to such appeals which the complainants herein

ecree. or any of them would have in case such appeals had been taken by them. The court reserves the right to retake and resell said property in case of the failure or neglect of the purchaser or purchasers or his or their assigns approved by the court as aforesaid, to comply with any order of the court in respect to the payment of receiver's indebtedness or prior lien claims within thirty days after the service of a certified copy of such order upon said purchaser or purchasers, or his or their assigns.

It was also ordered, adjudged and decreed that the fund or funds arising from the sale or sales of the properties above mentioned shall be applied as follows and in the following order, to-wit:

253 First: To the payment of the costs of this suit and of the suits consolidated herein and of the ancillary suits brought in the Circuit Court of the United States for the Northern District of Illinois by the same parties who are complainants herein, including all proper expenses of the sale herein ordered and such compensation as may be awarded by the court to said special master for making said sale, and the compensation of the complainants, The Farmers' Loan and Trust Company and John H. Barker, and the complainants Central Trust Company of New York and John H. Stotsenburg and James Murdock for their services, charges and expenses in the execution of their respective trusts, to be fixed and allowed by the court, and such proper allowances as the court may make for the fees and disbursements of the solicitors and counsel of said complainants, respectively, and next to the payment of such compensation as may be allowed to the receiver appointed in the suits consolidated herein and to the payment of any indebtedness of said receiver which has not been or shall not be paid out of the earnings and income of the property coming into the hands of said receiver, and which shall have matured and become payable at the time of the confirmation of sale herein. The above mentioned payments shall be apportioned between the funds received from such sale or sales and applicable respectively to the payment of said bonds secured by said several mortgages in such proportions as the court shall direct.

Second. The remainder of the fund derived from the sale of the property first to be offered for sale as hereinbefore directed, being all the property hereinbefore described, except said five parcels of railroad equipment, shall be applied (1st) to the payment ratably of the interest due and unpaid and of the principal unpaid upon said bonds secured by said mortgage, dated January 1st, 1886,

without preference of interest over principal or principal over interest; (2d) to the payment ratably of the interest due and unpaid and of the principal unpaid upon said bonds secured by said mortgage, dated May 1st, 1890, without preference of interest over principal or principal over interest; and (3d) to the payment ratably of the interest due and unpaid and of the principal unpaid upon said bonds secured by said mortgage, dated September 1st, 1894, without preference of interest over principal or principal over interest. Decree.

Third. The remander of the fund derived from the sale of that portion of the property upon which said mortgage, dated September 1st, 1894, is a first lien as hereinbefore adjudged, the same being said five parcels of railroad equipment, shall be applied to the payment ratably of the interest due and unpaid, and of the principal unpaid upon said bonds secured by said mortgage, dated September 1st, 1894, without preference of interest over principal or principal over interest.

Should there be any surplus remaining after making the payments directed in this subdivision third, the same shall be added to the fund derived from the sale of the property other than said five parcels of railroad equipment, and shall be applied as directed in subdivision second above.

Fourth. Should there be any surplus after making the payments above directed, the same shall remain in the registry of the court to abide such order or decree as the court may make in respect thereto.

It was also ordered, adjudged and decreed, that William A. Van Buren, be, and he is hereby, appointed Special Master to execute this decree, and, upon confirmation of the sale or sales
254 hereby ordered and full compliance with the terms of sale by the purchaser or purchasers, to make, execute and deliver to the purchaser or purchasers thereof a deed or deeds of the property sold; and, upon the request of the purchaser or purchasers, and exhibition of the Special Master's deed or deeds, the receiver, having possession of the property sold, shall make, execute and deliver to the said purchaser or purchasers good and sufficient deeds of conveyance or evidence of transfer of any and all property sold which is vested in, or standing in the name of said receiver, or to which said receiver has in any manner acquired title, and shall surrender to the purchaser or purchasers possession of the property

ecree. sold; and, upon confirmation of said sale or sales and full compliance with the terms of sale by the purchaser or purchasers, he or they shall be entitled to a deed or deeds of assurance to be executed according to law by the defendant Louisville, New Albany and Chicago Railway Company, and the complainants The Farmers' Loan and Trust Company and John H. Barker and the Central Trust Company of New York and John H. Stotsenburg and James Murdock.

The court reserves the right in term time or at Chambers to appoint another person Special Master with like powers in case of the death or disability to act of the Special Master hereby designated, or in case of his resignation or failure to act or removal by the court.

It was also ordered, adjudged and decreed that the purchaser or purchasers of the property herein decreed to be sold shall be invested with, and shall hold, possess and enjoy the said mortgaged premises and property herein decreed to be sold, or so much thereof as shall be purchased by him or them, and all the rights, privileges and franchises appertaining thereto as fully and completely as the said Louisville, New Albany and Chicago Railway Company now holds and enjoys, or has heretofore held or enjoyed the same; and further, that the said purchaser or purchasers shall have and be entitled to hold the said railroads and property freed and discharged of and from the liens of the mortgages foreclosed in this suit and from the claims of the parties to this suit, or any of them.

It was also ordered, adjudged and decreed that in case there should be any deficiency in payment of the amounts hereinbefore required and directed to be paid so that said amounts shall not be paid in full then said Special Master shall report to the court the amount of such deficiency, and the complainants as trustees of said mortgages respectively shall have judgment against the said defendant Louisville, New Albany and Chicago Railway Company for the amounts due, and shall have execution therefor pursuant to the rules and practice of this court.

It was also ordered, adjudged and decreed that all questions not hereby disposed of and determined be reserved for future adjudication, the settlement of the same being held not to be necessary for the purposes of this decree, and the court reserves the right to make such further orders at the foot of this decree as may seem just and proper. And the court reserves full power to adjudge with respect to the income of the receivership and the rights of creditors in and to the same.

255 And afterwards, to-wit: at the November Term of said Court, on the 27 day of February, 1897, before the Honorable John H. Baker, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now the Louisville Trust Company by St. John Boyle, Esq., its solicitor, and by leave of Court files its intervening petition herein without prejudice to the right of complainant to move to strike the same from the files. Intervening Petition of Louisville Trust Co.

UNITED STATES CIRCUIT COURT, FOR THE DISTRICT OF INDIANA.

Farmers' Loan and Trust Company,
vs.
The Louisville, New Albany & Chicago Railway Co.
} Intervening Petition of the Louisville Trust Company.

255½ The petitioner, the Louisville Trust Company, respectfully represents that it is a corporation duly created and existing under and by virtue of the laws of the State of Kentucky, with full power to acquire, hold and dispose of real and personal property of all kinds; and that the defendant, the Louisville, New Albany & Chicago Railway Company, is a corporation that was duly created under and by virtue of the laws of the State of Indiana, and was also further duly created under and by virtue of the laws of the State of Kentucky, with authority to construct, maintain, and operate railways in and through the said States, and with further authority from the said States to acquire by lease, purchase, or otherwise, other railroads, and for such purpose to guarantee the payment of the principal and interest of the bonds or other obligations of any railway connecting therewith.

And your petitioner further represents that the Richmond, Nicholasville, Irvine & Beattyville Railroad Company, hereinafter called the Beattyville Company, was a corporation created and existing under and by virtue of the laws of the State of Kentucky, and duly authorized to construct, maintain and operate a rail-
256 way therein, and to make, execute, and sell its negotiable bonds, and to secure the payment thereof by mortgage or deed of trust upon all of its railways and franchises and other properties acquired and to be acquired.

vening
ion of
sville
Co.

And the said Beattyville Company, being duly authorized, did make and execute an issue of 2,375 negotiable bonds (aggregating $2,375,000), dated July 1, 1889, by each of which it promised to pay to the Central Trust Company of New York, or bearer, the sum of one thousand dollars ($1,000) on the first day of July, A. D. 1919, with interest thereon from date at the rate of six per centum per annum, payable semi-annually and for which several installments of interest coupons were duly attached to said bonds; and the payment of the principal and interest of such bonds was secured by certain deed of trust in the nature of a mortgage, dated July 1, 1889, and executed by the said Beattyville Company to the said Central Trust Company of New York, and which bonds were subject to the provisions and conditions of the said mortgage. And the said Beattyville Railroad Company undertook and was, at the time hereinafter mentioned, engaged in the construction of a railroad in the State of Kentucky, beginning at Versailles in the County of Woodford in said State, and which is a point on the Louisville Southern Railway, and extending thence through Nicholsville, Richmond, and Irvine to Beattyville, in the said State, and part of which was then completed, and the same is now complete and in operation from Versailles aforesaid to Irvine aforesaid.

And your petitioner further represents that the said Louis-
257 ville, New Albany & Chicago Railway Company, hereinafter styled "The New Albany Company," being in possession, under lease, of the Louisville Southern Railway, running between Louisville and Lexington, in Kentucky, and through the said town of Versailles, and being then engaged in operating the same and desiring to acquire the said Beattyville road, which was then partly built and partly under construction, and to control and operate the same, entered into an agreement with the Ohio Valley Improvement and Contract Company—a corporation organized and existing under the laws of the State of Kentucky—whereby said New Albany Company undertook and agreed to guarantee certain bonds of the said Beattyville Company, of the issue aforesaid, as set out in the said agreement, in consideration of which it was to receive the controlling interest in the capital stock of the said Beattyville Company; and thereafter in pursuance of the said contract, the said New Albany Company did make and endorse upon certain of the said bonds its written guaranty, as follows:

"For value received, the Louisville, New Albany & Chicago Railway Company hereby guarantees to the holder of the within

bond the payment by the obligor therein of the principal and interest thereof, in accordance with the tenor thereof. Intervening Petition of Louisville Trust Co.

In testimony whereof, the said railway company has caused its corporate name to be signed by its President and its seal to be attached by its Secretary.

And which guarantee, being duly executed as recited therein and endorsed upon the said bonds, and the consideration therefor having been received, the said bonds were duly delivered to the Ohio Valley Improvement and Contract Company, and were by said company disposed of in open market; and that among the said bonds there were 125 thereof (Nos... to.. 258 inclusive) which were pledged to your petitioner, who received the same in the regular course of business in good faith and for value, and now is the owner and holder thereof as such pledgee, and the debt for which the same were pledged remain wholly due and unpaid. And the petitioner says that afterwards on April 9, 1890, the said New Albany Company filed in the United States Circuit Court for the District of Kentucky, its bill of complaint against the said Ohio Valley Improvement and Contract Company and others, and afterwards on January 28, 1893, filed its supplemental bill, in which the petitioner was made the defendant, sought and prayed that the guaranty of the said company on the bonds held by the petitioner should be cancelled and held illegal and void, and to which the said defendant answered.

And such proceedings were had therein that the said Circuit Court so decreed; and this petitioner thereupon appealed to the United States Circuit Court of Appeals for the Sixth Circuit, and such proceedings were had therein that the said decree of the Circuit Court was reversed, and the said court, being of opinion that the said guaranty endorsed upon the bonds held by this petitioner were valid and binding against the complainant in the hands of the petitioner, ordered that the said bill of complaint be dismissed. (See Louisville Trust Company v. Louisville R'y Co., 75 Fed. R. 433.) And afterwards, on November 14, 1896, the opinion and the mandate of the said Circuit Court of Appeals was filed in the said Circuit Court, and thereupon it was ordered that the said bill be dismissed, and that the petitioner among others should re- 259 cover its costs in said suit expended; and which judgment is in full force and unreversed. And afterwards, on the 16th of November, 1896, the Supreme Court of the United States, by a writ of *certiorari*, ordered the Circuit Court of Appeals to certify

the record therein to the said Supreme Court for review and determination, and upon which proceedings the said matters are pending. And by reason of the premises, the said New Albany Company is estopped to deny or set up any defense to the validity or enforcement of the said guaranty, but is bound by the judgment aforesaid.

And the petitioner further says that afterwards John T. Mills, Jr., instituted a suit against the said New Albany Company in the United States Circuit Court for the District of Indiana, on August 24, 1896, and the said company appeared thereto and confessed judgment; and on the same day a writ of *fieri facias* was issued thereon, and on the same day was returned wholly unsatisfied; and thereupon, on the same day, the said John T. Mills, Jr., filed his bill of complaint herein and moved for the appointment of a receiver to take charge of all the assets and properties of the said defendant company, and to which the said company appeared and confessed the allegations of the bill of complaint; and thereupon W. H. McDoel was appointed receiver, who had theretofore been the general manager of the said company. And the petitioner charges that the said J. T. Mills, Jr., claimed to be a creditor to the amount of $494,911.35, but did not disclose or discover to the court, in his proceedings, that he was not a general creditor, but he was at the time, if a creditor at all, secured with collateral securities, the value whereof is unknown to
260 your petitioner. And the petitioner charges that the proceedings in behalf of the said John T. Mills, Jr., were procured by the said New Albany Company for the purpose of hindering and delaying the general or unsecured creditors of the said company in the enforcement of their debts; and that since the entry of the said order of appointment no step has taken in the said cause, either to ascertain or to bring into court the assets, which are subject to the payment of the said debts, and no proceeding has been taken to notify or to bring before the court the said general or unsecured creditors; that afterwards, on November 12, 1896, the Farmers' Loan and Trust Company filed its bill against the said New Albany Company to foreclose the mortgage executed to the complainant as trustee, dated January 1, 1886, to secure an issue of ten millions of dollars of bonds; and also on the same day the Central Trust Company filed its bill of complaint to foreclose a mortgage executed by the said New Albany Company to the said Central Trust Company and John H. Stotsenburg, trustees, on May 1, 1890. And on the same day, November 12, 1896, an order was entered herein consolidating the said causes and extending

the receivership under such bills, and thereafter, on the....day of....1897, a decree was entered herein foreclosing the said mortgage and ordering a sale of the mortgaged properties, and all of which was done before there was a right to have such decree entered, and without bringing before the court the general or unsecured creditors so that they might be heard in their own behalf. Intervening Petition of Louisville Trust Co.

And the petitioner further says that prior to the entry of the
261 said decree the holders of the bonds secured by the mortgages to the Farmers' Loan and Trust Company and the Central Trust Company aforesaid, and the holders of the preferred and common stock of the said Louisville, New Albany & Chicago Railway Company, or a part thereof, had entered into an arrangement or agreement for the purpose of procuring the sale of the said property, its purchase by and in behalf of the parties entering into such combination, and re-organization thereof, and the issue of securities to the said parties, including said stockholders, without the payment of the debts and liabilities of the said company, and for the purpose of hindering and delaying the said creditors and with a view to prevent the collection or enforcement of such debts and liabilities; and that the said decree of sale was obtained by the said company and said complainants in order to carry out such unlawful purpose and to prevent the general or unsecured creditors of the said company from having an opportunity to be heard in matters arising in the said cause.

Your petitioner alleges that the defendant, the Louisville, New Albany & Chicago Railway Company, was originally formed and established under and in accordance with the laws of the State of Indiana, on the....day of....with the usual powers incident to railway corporations, and that afterwards the said company procured a law to be passed by the State of Kentucky, whereby the said corporation was made and declared to be a corporation of the State of Kentucky by an act of the General Assembly of such State, entitled "An Act to Incorporate the Louisville, New Albany & Chicago Railway Company, approved April 8, 1880," and amended by another act entitled "An Act to Amend an
262 Act to Incorporate the Louisville, New Albany & Chicago Railway Company, approved April 8, 1880," and by virtue of which the said corporation was a corporation of the States of Indiana and Kentucky.

The petitioner says that afterwards, on or about July 11, 1881, the said defendant undertook and attempted to consolidate

ening
n of
ille
Co.

and merge its capital stock, properties, and franchises with an alleged corporation known as the Chicago & Indianapolis Air Line Railway Company, by certain articles of consolidation, dated May 5, 1881, a copy of which articles is filed herewith as part hereof, marked "Exhibit A." The petitioner alleges that the pretended corporation known as the Chicago & Indianapolis Air Line Railway Company, claimed and pretended to be a consolidated corporation under the laws of the State of Illinois and Indiana, and that it had been formed and created by a consolidation of a corporation known as the Chicago & Dyer Company and the Chicago & Indianapolis Air Line Railway Company that the said Chicago & Dyer Railroad Company was a corporation created and established under the laws of the State of Illinois, with authority to build and construct railways, and with other powers incident thereto.

And the said Chicago & Indianapolis Air Line Railway Company was a corporation formed and created and in accordance with the laws of the State of Indiana, with power to construct and maintain railways, and other powers incident thereto; and that the said two corporations claimed and pretended and attempted, on or about January or February, 1880, to consolidate their capital stock, franchises, and properties, by consolidating the said two com-
263 panies, and which said consolidated company claimed and pretended to acquire railway properties and to construct and maintain a railway from Chicago in the State of Illinois to Indianapolis in the State of Indiana. Your petitioner alleges that at the time of this said pretended consolidation it was against the law and policy of the State of Illinois to allow or permit such consolidation, or the consolidation of any such railway company of that State with any railway company of another State, and and that the said attempted consolidation was void and of no effect, and passed no title or rights or franchises to such consolidated company, and it has been so decided and determined by the Supreme Court of the State of Illinois in the case of the American Loan & Trust Company v. the Minnesota Company, 42 N. E. Reporter, 153.

And the petitioner alleges that after such pretended and attempted consolidation the defendant, the Louisville, New Albany & Chicago Railway Company, attempted to consolidate with this consolidated company, called the Chicago & Indianapolis Air Line Railway Company, and that such attempted consolidation was unauthorized and void and of no effect, and that the agreement of consolidation was unlawful and void; and the said defendant ac-

quired no right, title or interest in and to the pretended properties, rights or franchises of said Chicago & Indianapolis Air Line Railway Company; and the issue of bonds and stock agreed to be made by the defendant company was contrary to law and after such pretended consolidation the defendant, the Louisville, New Albany & Chicago Railway Company, did issue to the alleged
264 holders of the capital stock of the Chicago & Indianapolis Air Line Railway Company a large amount of stock in the pretended consolidated company, and did make and execute a mortgage to the Farmers' Loan and Trust Company, of New York, and John H. Baker, trustees, dated January 1, 1886, embracing the properties and franchises claimed to be owned by the said Consolidated Air Line Railway Company, for the purpose of securing the payment of $2,300,000 of bonds, dated August 10, 1881, payable August 10, 1911, with interest at the rate of six per cent. per annum, and which said mortgage was wholly void, and which said bonds were illegal and unauthorized.

Intervening Petition of Louisville Trust Co.

And the petitioner alleges that all of the said issue of bonds are now outstanding and unpaid. The mortgages thereafter executed by the said Louisville, New Albany & Chicago Railway Company to the Farmers' Loan and Trust Company, dated January 1, 1886, to secure ten millions of dollars, and the mortgage by the same company to the Central Trust Company of New York, dated May 1, 1890, both of which mortgages are set forth in the bills of complaint filed by the said companies herein, pretended to have been made and executed subject to the issue of the bonds before mentioned, and all of the said pretended mortgages were unlawful and void, and did not constitute any charge or lien upon the property embraced therein, and were not duly and properly executed, and especially did not and could not embrace any property or any portion thereof, or of the rights and franchises that were claimed or pretended to belong or be acquired from the Chi-
265 cago & Indianapolis Air Line Railway Company.

And the petitioner represents that the matters herein contained have not been disclosed or set up in this cause, and that no opportunity has been given the petitioner or other creditors of the defendant company to ascertain and prove the same and be heard in relation thereto, and that the decree of foreclosure and sale entered herein has been prematurely and inadvertently entered, and ought in justice and equity to be set aside.

And the petitioner further represents that there are large and

ervening
tition of
isville
ust Co.

valuable assets belonging to said New Albany Company which are not included in any of the alleged mortgages, and which assets are subject to the debts and liabilities of the unsecured creditors of the said company, but the nature, description and amount of such assets are unknown to your petitioner. And among others, your petitioner says that the said receiver entered upon and took possession of the railroad of the said New Albany Company on August 24, 1896, and has continued since to maintain and operate the same, and receive the tolls, income and profits thereof, and to pay the expenses of such operation; and that all the moneys earned by the said receiver over and above the amount necessary to pay the operating expenses should be, and does, constitute a fund for distribution among the creditors of the said defendant company; and that the said net earnings amount to a large sum, but the amount thereof is unknown to your petitioner.

And the plaintiff says that the said mortgage to the Central
266 Trust Company, etc., of May 1, 1890, provides as follows:

> "Until default shall be made in the payment of the principal or interest secured by said bonds or some of them, and such default shall have continued for a period of six months as hereinafter set forth, the Railway Company shall be permitted to possess, manage, operate and enjoy all and singular the mortgaged premises with their appurtenances, and to take, demand, use and enjoy the rents, income, profits and issues of all and singular the premises and property hereby conveyed in the same manner and to the same effect as if this indenture had not been made."

And the petitioner says that no default occurred in the payment of the principal or interest of the said bonds or any of them until November 1, 1896, and which default has not yet continued for the space of six months; and the said mortgagee is not entitled to the benefit of any of the earnings of the said receiver, accrued from the operation of the railway in his charge; and that under and by virtue of the provisions of the mortgage aforesaid, there was no right to a foreclosure of the said mortgage because of such default in the payment of interest until after said period of six months, and the said decree of foreclosure upon the said mortgage was premature.

And your petitioner further represents that in the aforesaid mortgage to the Farmers' Loan and Trust Company, dated Janu-

ary 1, 1886, it was provided that until default should be made in the payment of the said bonds or some of them, the said Railway Company should be permitted to possess, manage, operate and enjoy all and singular the mortgaged premises. And it was further provided therein that the trustees should have the right to enter and sell, "in case default in the payment of interest on any of the bonds secured by this deed shall be made, and continue for 267 the space of six months, and such payment shall be duly demanded." And it was further provided that it was only in the same event that there should be a right to foreclose the said mortgage; and no such default did occur until October 1, 1896, and that the said mortgagee and the holders of bonds secured thereby are not entitled to the benefit of any of the earnings accrued or accruing in the operation of the said railway by the receiver herein, and is not entitled to foreclose the said mortgage until after the expiration of the period of six months aforesaid.

Intervening Petition of Louisville Trust Co.

And your petitioner further says that it is informed and believes that a large portion of the capital stock of the said New Albany Company has been issued and has not been fully paid by the subscribers or holders thereof; and that a very large sum of money is due and payable by the holders of the said stock to the said company, and which constitutes a trust fund for the payment of the debts of the said corporation, and which should be directed herein to be collected for and in behalf of such creditors, and be distributed accordingly.

Wherefore, your petitioner prays that the decree of foreclosure and sale heretofore entered in this cause be set aside, that the pretended consolidations herein mentioned be adjudged void, and that the said mortgages before mentioned be declared to be invalid; that this cause be referred to a commissioner to ascertain and report what assets of the said New Albany Company are embraced by any liens, and what are not so included, and the amounts and descriptions thereof; and that, among other things, the 268 master be directed to ascertain what portion of the capital stock has not been paid for, and the amounts due thereon; and that the receiver herein be directed to take steps to enforce the collection of any amounts due to the said company; that due and proper advertisement be given for the proof of debts, and that said master be directed to ascertain and report the names of the creditors herein and the amounts of debts due to them; that it be adjudged that the said master ascertain what net earnings have accrued, and shall hereafter accrue, from the operation of the said

ervening
tition of
uisville
ust Co.

railway in the hands of the receiver, and that the amount thereof be adjudged and declared to be a fund to be distributed among the general and unsecured creditors of the said company; and that all such other and further proceedings be had for the sale of the assets of the said company and the distribution thereof, according to law and the rights of the parties.

Wherefore, the petitioner prays that an order be entered herein, commanding the plaintiff, John T. Mills, Jr., the Farmers' Loan and Trust Company of New York, The Central Trust Company of New York, and the Louisville, New Albany & Chicago Railway Company to appear within a time to be fixed in such order, and to plead or make answer to the allegations herein; and for all such other and further orders and judgments as to the court shall seem meet and proper.

H. V. LOVING,
Pres.
ST. JOHN BOYLE,
Solicitor for Louisville Trust Co.

STATE OF KENTUCKY, }
JEFFERSON COUNTY. }

Personally appeared before me, E. J. Hayward, a notary 269 public in and for said State & county; H. V. Loving, who being duly sworn sayeth that he is President of the Louisville Trust Company and that the statements contained in the foregoing petition are true as he verily believes.

E. J. HAYWARD,
[SEAL] Notary Public, Jefferson Co., Ky.

And afterwards, to-wit: at the November term of said court, on the 9 day of March, 1897, before the Honorable William A. Woods, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

er upon
same.

The petition of the Louisville Trust Company filed herein on the 27 day of February, 1897, came on to be heard this day and was argued by counsel and upon consideration thereof the court refuses to vacate the decree of foreclosure and sale heretofore entered in this cause on the 23 day of January, 1897, and refuses to enter and order postponing or adjourning the sale.

270 And afterwards, to-wit: at the November term of said court on the 10th day of March, 1897, before the Honorable William A. Woods, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now William A. VanBuren, Esq., Special Master herein and files his report of sale herein in the words and figures following, to-wit:

Special Master's report of sale.

I, William A. VanBuren, heretofore appointed Special Master under certain final decrees of foreclosure and sale entered by the Circuit Court of the United States for the District of Indiana and the Circuit Court of the United States for the Northern District of Illinois, in the suits therein pending under the above title, respectfully report to the court:

Pursuant to the directions of said decrees, I caused notice to published at least once in each week for the term of four weeks preceeding the date of sale, in four newspapers of general circulation, to-wit:

The New Albany Tribune published in New Albany, Indiana; The Indianapolis Journal published in Indianapolis, Indiana; The Chicago Tribune published in Chicago, Illinois; and The Commercial Advertiser, published in the City of New York, in which it was stated that I would on the 10th day of March, 1897, or the day day to which I might adjourn the sale, at eleven o'clock in the forenoon, at the round house of the defendant Louisville, New Albany and Chicago Railway Company, near the Belt Line Junction in the City of Indianapolis, Indiana, sell at public auction to the highest bidder or bidders, the property directed by the said decrees to be sold, which notice also contained the terms of sale and a de-
271 scription of the property to be sold, and a reference to said decrees. A copy of said notice, marked "Schedule A." is hereunto annexed, forming a part of this report.

On the 10th day of March, 1897, at eleven o'clock in the forenoon, I attended at the round house of the defendant Louisville, New Albany and Chicago Railway Company, near the Belt Line Junction in the City of Indianapolis, Indiana, and then and there, as required by said decrees, offered for sale at public auction, to the

pecial aster's report sale.

highest bidder or bidders, the railroads and property which by said decree I was directed to sell, the same being described in said notice of sale, in the following manner, that is to say:

1. I first offered for sale, separately and in one parcel, all the property mentioned and described in said notice of sale, excepting only five parcels of railroad equipment. The highest and best bid for said property was made by Frederic P. Olcott, Henry W. Poor and Henry C. Ruse as a committee of the bondholders of the Louisville, New Albany and Chicago Railway Company who bid for the same the sum of two million five hundred thousand dollars, ($2,500,000.00), and at the time of making such bid, placed in my hands or deposited with me a pledge that they would make good their bid if accepted by the court, the sum of twenty-five thousand dollars in a certified check.

2. I next offered for sale separately and in one parcel, said five parcels of railroad equipment mentioned and described in said notice of sale. The highest and best bid for said property
272 was made by Frederic P. Olcott, Henry W. Poor, and Henry C. Russe as a committee of bondholders of the Louisville, New Albany and Chicago Railway Company who bid for the same the the sum of five hundred thousand dollars ($500,000.00), and at the time of making such bid placed in my hands or deposited with me as a pledge that they would make good their bid if accepted by the court the sum of five thousand dollars in a certified check.

3. After having offered said property separately as above mentioned, I then offered for sale the entire property mentioned and described in said notice of sale, and including said five parcels of railroad equipment, as one parcel. The highest and best bid for said property was made by Frederic P. Olcott, Henry W. Poor and Henry C. Rouse as a committee of the Louisville, New Albany and Chicago Railway Company who bid for the same the sum of three million and one thousand dollars ($3,001,000.00), and at the time of making such bid placed in my hands or deposited with me as a pledge that they would make good their bid if accepted by the court, the sum of thirty thousand dollars in certified checks.

The highest bid received by me for said entire property exceeded the aggregate amount of the highest bids for the two parcels so offered separately as offered. I thereupon struck off and sold to said Frederic P. Olcott, Henry W. Poor and Henry C. Rouse said railroads and property as an entirety, for their said bid of three

million and one thousand dollars ($3,001,000.00), and I have paid into the registry of this court the sum of $30,000 cash paid over by said purchasers on their said last mentioned bid. Special Master's Report of Sale.

273

All of which is respectfully submitted.

Dated March 10, 1897.

WILLIAM A. VAN BUREN,
Special Master.

TURNER, MCCLURE & ROLSTON,
Solicitors for Complainants, The Farmers' Loan and Trust Company aad John H. Barker.

BUTLER, NOTMAN, JOLINE & MYNDERSE, AND
FLOYD A. WOODS,
Solicitors for Complainants, Central Trust Company of New York, John H. Stotsenburg and James Murdock.

And at the same time, on said 10th day of March, 1897, before the Honorable William A. Woods, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Now, on this 10th day of March, 1897, comes the complainants The Farmers' Loan and Trust Company and John H. Barker, by Turner, McClure & Rolston, their solicitors, and the complainants Central Trust Company of New York, John H. Stotsenburg and James Murdock, by Butler, Notman, Joline & Mynderse and Floyd A. Woods, their solicitors, and move to confirm the sale made herein on the 10th day of March, 1897, by the Special Master, and to approve said Special Master's report of sale, which is dated March 10, 1897, and filed herein; and come also the defendants The Louisville, New Albany and Chicago Railway Company, The Orleans, West Baden and French Lick Springs Railway Company, and The Bedford and Bloomfield Railroad Company, by George W. Kretzinger their counsel, and complainant John T. Mills, Jr., by Henry Crawford, his counsel, and consent to such confirmation; and it appearing by the report of said special master that Frederic P. Olcott, Henry W. Poor and Henry C. Rouse, as a committee of bondholders of the Louisville, New Albany and Chicago Railway Company the purchasers at said sale, bid for the Order confirming sale.

274

Order confirming sale.

whole property sold the sum of $3,001,000.00, and that this was the highest and best bid, and said purchasers have made the payment thus far obligatory upon them, to-wit, the sum of $30,000, as provided in a decree of foreclosure and sale under which said sale was made, and no cause being shown against said redort, it is now

Ordered, adjudged and decreed that the report of sale of said Special Master be and the same is hereby confirmed, and that the said sale be and the same is hereby ratified, approved and confirmed, and made absolute, subject to the terms, provisions and conditions contained in the decree of foreclosure and sale herein dated January 23, 1897, and that said Special Master execute and deliver to said purchasers, or their assigns, a deed of conveyance of the property purchased by said purchasers at said sale.

It is further ordered, adjudged and decreed that the said purchasers or their assigns shall, within thirty days from the entry of this decree, pay to said Special Master the balance of said bid remaining unpaid, to-wit, $2,971,000, in the manner provided in said decree of foreclosure and sale, and upon such payment shall be entitled to take possession of the property purchased and every part thereof.

275 It is further ordered, adjudged and decreed that there be allowed and paid out of the proceeds of sale herein the proper taxable costs accrued in this case in this court, and also in the Circuit Court of the United States for the Northern District of Illinois in the suit pending in said last mentioned court between the same parties who are parties to this suit, but not including in such taxable costs any sums which already have been paid to said Clerks for or on account of costs herein. Said taxable costs so remaining unpaid shall be paid into said courts respectively in satisfaction of the cost bills still unpaid therein upon the certificates of the Clerks of said Courts respectively, showing the taxation of said costs, and the amount of said costs remaining unpaid.

It is further ordered, adjudged and decreed that there be paid to William A. VanBuren, the Special Master appointed to make the sale herein, the sum of $3,500,00 in full payment of his compensation and all his expenses heretofore incurred by him in performing his duties as Special Master, but not including the expenses of advertising the sale herein, amounting to the sum of $.....which sum is allowed to him and is to be paid out of the proceeds of sale for the purpose of paying expenses of advertising the sale herein. Of said sum of $3,500 the sum of

$2,000 shall be paid to him when he shall have completed his duties as Special Master herein, and shall have filed his final report of his proceedings as Special Master. Order confirming sale.

276 And afterwards, to-wit: at the November Term of said court on the 1st day of May, 1897, before the Honorable William A. Woods, judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Petition for Appeal

Comes now the Louisville Trust Company, by St. John Boyle, Esq., its solicitor, and files its petition for appeal to the United States Circuit Court of Appeals for the Seventh Circuit, together with its assignment of errors herein, in the words following, to-wi:

The Louisville Trust Company, intervenor herein, represents that the court has erred in the proceedings and in the orders and decrees in the above entitled cause, and which errors have been designated and set forth in an Assignment of Errors, which is filed herewith as part hereof.

Wherefore, said Louisville Trust Company prays an appeal to the Circuit Court of Appeals, and that a proper citation be granted requiring the Louisville, New Albany & Chicago Railway Company, John T. Mills, Jr., the Farmers' Loan and Trust Company and John H. Barker, trustees, The Central Trust Company of New York and John H. Stotsenburg, trustees, and James Murdock, trustee, and Fred P. Olcott, Henry W. Poor & Henry C. Rouse to appear and show cause to the said Circuit Court of Appeals why the decrees and orders in the said cause should not be reversed.

ST. JOHN BOYLE,
For Louisville Trust Company.

UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF INDIANA.

Farmers' Loan and Trust Company,
Complainants,
vs.
Louisville, New Albany & Chicago Railway Company,
Defendants.

277 Assignment of Errors by the Louisville Trust Company.

Assignment of Errors.

The Louisville Trust Company complains of errors in the proceedings in the United States Circuit Court for the District of Indiana, in the suit of the Farmers' Loan and Trust Company, &c., vs. the Louisville, New Albany & Chicago Railway Company, &c., and assigns the following errors:

First. The court erred in entering the decree of foreclosure and sale herein, because the said cause had not been prepared and was not ready for hearing, and the said hearing and decree was entered prematurely.

Second. The court erred in deciding that the trustees in the mortgages on which said decree was entered, were entitled to institute their several proceedings on such mortgages at the time when instituted, and in deciding that, according to the terms of the said mortgages, they or any of them were entitled to a decree of foreclosure and sale at the time of the entry of such decree.

Third. The court erred in adjudging that any such default had occurred or had been continued, so as to authorize the institution of proceedings for foreclosure or the entry of a decree of sale.

Fourth. The court erred in not requiring the receiver in the said cause to pay the interest due upon the said bonds secured by said mortgages, and in ordering the expenditures of moneys by the said receiver, which would have been sufficient and could have
278 been used in the payment of such interests.

Fifth. The court erred in refusing to set aside the order of

sale upon the application of the said Louisville Trust Company for such an order on its intervening petition filed in the said cause, and in not postponing the said sale. Assignment of Errors.

Sixth. The court erred in deciding that the mortgage to the said Farmers' Loan and Trust Company and John H. Barker, and the bonds secured thereby, was a good and valid mortgage upon the properties so decreed to be sold.

Seventh. The court erred in deciding that the mortgage executed to the Central Trust Company of New York and John H. Stotsenberg, and the bonds secured thereby, were good and valid obligations, or created a good and valid lien upon the properties embraced in the said decree of sale.

Eighth. The court erred in deciding that the said mortgages were good and valid mortgages upon the leasehold and other properties situated and existing within the State of Illinois, and in decreeing as sale of such properties thereunder.

Ninth. The court erred in directing a sale of the said railroad properties without ascerting what assets existed belonging to the company, and what net earnings had accrued under the receivership, and without applying or directing the application thereof to the payment of the interest on the mortgage bonds.

Tenth. The court erred in confirming the sale herein, and in not giving time in which parties might file exceptions to the same.

ST. JOHN BOYLE,
of Louisville Trust Co.

279 And said petition for appeal is now by the court allowed, upon the filing by the said Louisville Trust Company of a proper bond in the penalty of $500, with sureties to the approval of the clerk of this court.

And afterwards, to-wit: at the May term of said court, on the 11th day of May, 1897, before the Honorable John H. Baker, one of the judges as aforesaid of said court, the following further proceedings in the above entitled cause were had, to-wit:

ond.

Comes now the Louisville Trust Company by St. John Boyle, Esq., its solicitor, and files its bond on appeal herein, with the American Surety Company of New York as surety thereon, which bond is now approved by the clerk of this court and is in the words following, to-wit:

Know all men by these presents. That we the Louisville Trust Company and American Surety Company of New York are held and firmly bound unto the above named Louisville, New Albany & Chicago Railway Company, The Farmers Loan & Trust Co., The Central Trust, John H. Barker, John H. Stotsenburg, John T. Mills, Jr., F. P. Olcott, Henry W. Parr and Henry C. Rouse, in the sum of five hundred dollars to be paid to said parties to which payment well and truly to be made, we bind ourselves jointly and severally, and our and each of our heirs, executors and administrators, jointly by these presents.

Sealed with our seals and dated this 8th day of May, 1897.

Whereas the above named The Louisville Trust Company hath prosecuted an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, to reverse the decree rendered in the above entitled suit by the Circuit Court of the United States for the District of Indiana; Now, therefore, the condition of this obligation is, that if the above named the Louisville Trust Co. shall prosecute his said appeal to effect and answer all costs and damages that may be adjudged or awarded against him, if he shall fail
280 to make good his plea, then this obligation to be void; otherwise in full force.

THE LOUISVILLE TRUST CO. (Seal.)
By H. V. LOVING, President.
AMERICAN SURETY COMPANY OF NEW YORK, (Seal.)
By OTTWELL COY,
Resident Vice-President.
FRANK D. SWOPE,
Resident Assistant Secretary.

Sealed and delivered in presence of
ST. JOHN BOYLE.

Registered for American Surety
Company of N. Y., By Columbia
Finance & Trust Co., Louisville, Ky.
By MATT OWENS.

Taken and approved by me this 11th day of May, 1897.
NOBLE C. BUTLER,
Clerk.

CHANCERY.

UNITED STATES OF AMERICA.

To The Louisville, New Albany & Chicago Railway Company, John T. Mills, Jr., The Farmers' Loan and Trust Company and John H. Barker, Trustees, The Central Trust Company of New York, and John H. Stotsenburg and James Murdock, trustees, Fred P. Olcott, Henry W. Poor and Henry C. Rouse, Greeting:

You are hereby cited and admonished to be and appear at a Citation. United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Chicago thirty days after the date hereof, pursuant to an appeal which has been allowed by the Circuit Court of the United States for the District of Indiana, from its final decree in a suit wherein The Louisville Trust Company is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. John H. Baker, Judge of the District Court of the United States for the District of Indiana, and ex-officio Judge of said Circuit Court, this 11th day of May, in the year of our Lord one thousand eight hundred and ninety-seven.

JOHN H. BAKER,
[SEAL] Judge.

I served this citation by reading to Floyd A. Woods, attorney for The Central Trust Company of New York, and John H. Stotsenburg and James Murdock, to Indianapolis, May 14th, 1897, and delivering him a true copy of the citation on May 15, 1897. The attorneys for The Louisville, New Albany & Chicago Ry. Co., John T. Mills, Jr., The Farmers' Loan and Trust Company, John H. Barker, Fred P. Olcott, Henry W. Poor and Henry C. Rouse not found in my district.

S. E. KERCHEVAL,
U. S. Marshal.
By JOHN E. FOLEY,
Deputy.

Service 2.00
Copy 10
2.10

UNITED STATES OF AMERICA. }
DISTRICT OF INDIANA. } ss.

ificate of
rk

281 I, Noble C. Butler, Clerk of the Circuit Court of the United States within and for said district, do hereby certify that the above and foregoing is a full, true and complete transcript of the record in the cause of The Farmers' Loan and Trust Company, et al., against the Louisville, New Albany & Chicago Railway Company, et al., on the Intervening Petition of the Louisville Trust Company, as fully as the same appears upon the records and files now in my office.

Witness my hand and the seal of said court, at Indianapolis in said district, this 11th day of May, A. D. 1897.

NOBLE C. BUTLER,
Clerk.

[SEAL]

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held at the United States Court Rooms, in the City of Chicago, in said Seventh Circuit, on the fifth day of October, 1896, of the October term, in the year of our Lord one thousand eight hundred and ninety-six and of our Independence the one hundred and twenty-first year.

And afterwards, to wit, on the twenty-fifth day of May, 1897, in the October term last aforesaid, came the Farmers' Loan and Trust Company, by its counsel, Mr. Herbert B. Turner, and filed in the Clerk's office of the said Court his appearance, which said appearance was in the words and figures following, to wit :

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SEVENTH CIRCUIT.

The Louisville Trust Company — October Term, 1896.

No. 420. *versus*

The Louisville, New Albany & Chicago Railway Co. *et al.*

The Clerk will enter my appearance as counsel for the Farmers' Loan and Trust Company. Herbert B. Turner.

Note : Must be signed by a member of the Bar of the United States Circuit Court of Appeals for the Seventh Circuit. Individual and not firm names must be signed.

Endorsed : Filed May 25, 1897. Oliver T. Morton, *Clerk.*

And afterwards, to wit, on the sixteenth day of September, 1897, in the October term last aforesaid, came John T. Mills, jr., by his counsel, Mr. Henry Crawford, and filed in the Clerk's office of the said Court, his appearance, which said appearance was in the words and figures following, to wit :

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SEVENTH CIRCUIT.

October Term, 1896.

The Louisville Trust Company, - - - - *Appellant,*

No. 420. *versus*

The Louisville, New Albany & Chicago Railway Co. *et al.*, *Appellees.*

The Clerk will enter my appearance as counsel for John T. Mills, jr., Appellee.

Henry Crawford,
Solicitor for John T. Mills, jr.

Note: Must be signed by a member of the Bar of the United States Circuit Court of Appeals for the Seventh Circuit. Individual and not firm names must be signed.

Endorsed: Filed Sept. 16, 1897. Oliver T. Morton, *Clerk.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held at the United States Court Rooms, in the City of Chicago, in said Seventh Circuit, on the fourth day of October, 1897, of the October Term, in the year of our Lord one thousand eight hundred and ninety-seven and of our Independence the one hundred and twenty-second year.

And afterwards, to wit, on the fourth day of October, 1897, in the October term last aforesaid, in the record of proceedings thereof, in said entitled cause, appears the following entry, to wit:

Monday, October 4, 1897.

Before: Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, Circuit Judge.
Hon. John W. Showalter, Circuit Judge.

The Louisville Trust Company, - - - - *Appellant,*

No. 420. *versus*

The Louisville, New Albany & Chicago R. R. Co. *et al.*

It is now here ordered that this cause be, and the same is hereby, set down for hearing, Thursday, November 4, 1897.

And afterwards, to wit, on the sixth day of October, 1897, in the October term last aforesaid, came the appellees, by their counsel, Mr. A. H. Joline, Mr. Elisha C. Field, Mr. G. W. Kretzinger, and Mr. Floyd A. Woods, and filed, in the Clerk's office of said Court, their appearance, which said appearance was in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SEVENTH CIRCUIT.

October Term, 1896.

The Louisville Trust Company, - - - - - *Appellant*,

No. 420. *versus*

The Louisville, New Albany & Chicago Railroad Co. *et al.*

The Clerk will enter my appearance as counsel for the appellees.

A. H. Joline,
Elisha C. Field,
G. W. Kretzinger,
Floyd A. Woods.

Note: Must be signed by a member of the Bar of the United States Circuit Court of Appeals for the Seventh Circuit. Individual and not firm names must be signed.

Endorsed: Filed October 6, 1897. Oliver T. Morton, *Clerk*.

And afterwards, to wit, on the twelfth day of October, 1897, in the October term last aforesaid, came the appellees, by their counsel, Mr. G. W. Kretzinger, Mr. E. C. Field, Mr. A. H. Joline, and Mr. Floyd A. Woods, and filed in the Clerk's office office of said Court, its motion to dismiss appeal, which said motion was in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SEVENTH CIRCUIT.

October Term, A. D. 1896.

No. 420.

MOTION TO DISMISS APPEAL.

And now comes the Louisville, New Albany & Chicago Railway Co., by G. W. Kretzinger and E. C. Field, its solicitors, and the

Farmers Loan and Trust Company and John H. Barker, the Central Trust Company of New York, John H. Stotsenberg and James Murdock, as Trustees, by Floyd A. Woods, their solicitor, and Frederick P. Olcott, Henry W. Poor, and Henry C. Rouse, by Adrian H. Joline, their solicitor, and show to the Court:

1. August 24, 1896, John T. Mills, jr., one of the appellees, filed his certain creditor's bill in the Circuit Court of the United States for the district of Indiana, against the Louisville, New Albany & Chicago Railway Company, and moved thereon for the appointment of a receiver, which motion was granted and receiver appointed and possession taken. (Printed Transcript, 42.)

2. Thereafter, and on November 12th, 1896, The Farmers Loan and Trust Company of New York, with their associate trustees, filed their separate bills in said Court to foreclose the several mortgages in the bills mentioned. (Printed Transcript, 88.)

That thereafter these cases and the case of Mills on creditor's bill were, by the order of said Court, consolidated, with the direction that thereafter said cause should proceed as consolidated cause, entitled, "The Farmers Loan and Trust Company and John H. Barker, complainants, against," etc. (Printed Transcript, 97.)

3. That, January 23, 1897, appellant appeared in the Circuit Court and filed its petition therein alleging, among other things, that it was the owner of 125 of the bonds of the Richmond, Nicholasville, Irvine & Beattyville Railroad Company, on which was endorsed the guaranty of the Louisville, New Albany & Chicago Railway Company; that no part of the interest had been paid thereon since January 1, 1891, and thereon appellant moved that it be allowed to file this petition, etc., which was granted. (Printed Transcript, 166.)

4. On the same date, to wit: January 23, 1897, the Circuit Court entered a decree foreclosing the mortgages described in the above mentioned bills, with an order directing the sale thereunder by special master, subject to the following liabilities and terms. (Printed Transcript, 185):

> "It was also ordered, adjudged and decreed that the purchaser or purchasers of any parcel at such sale, shall as part of the consideration of such sale, and in addition to the price bid, take the property purchased upon the express condition that he or they or his or their assigns approved by the court will, notwithstanding, pay off and satisfy any and all receiver's indebtedness which shall not be paid by the receiver herein out of the income and earnings of the mortgaged property, or which shall not be paid out of the proceeds of sale hereinafter directed; and also any and all claims heretofore filed, or which

may be hereafter filed within a period to be limited by an order of this court, in this cause or either of the causes consolidated herein in respect of the parcel so purchased, but only when and as the court shall allow such claims and adjudge the same to be prior in lien to the mortgages foreclosed in this suit or either of them, and shall determine the parcel in respect of which such claims shall be payable, and in accordance with the order or orders of the court allowing such claims and adjudging with respect thereto; and the purchaser or purchasers or their approved assigns shall be entitled to appeal from any and all orders or decrees of the court in respect to such claims or any of them, and shall have all the rights in respect to such appeals which the complainants herein or any of them would have in case such appeals had been taken by them. *The court reserves the right to retake and resell* said property in case of the failure or neglect of the purchaser or purchasers, or his or their assigns approved by the court as aforesaid, to comply with any order of the court in respect to the payment of receiver's indebtedness or prior liens claims within thirty days after the service of a certified copy of such order upon such purchaser or purchasers, or his or their assigns. . . .

"It was also ordered, adjudged and decreed that all questions not hereby disposed of and determined be reserved for future adjudication, the settlement of the same being held not to be necessary for the purpose of this decree, and the court reserves the right to make such further orders at the foot of this decree as may seem just and proper." (See Decree, Tr. 188.)

5. That thereafter and on February 27, 1897, appellant filed its further petition of intervention in said cause (Transcript, 189), and therein among other things challenged the validity of said foreclosed mortgages and the right to foreclose the same, and prayed among other things that the decree of foreclosure be set aside; that the pretended consolidations in the intervening petition mentioned be adjudged void, that the mortgages be held invalid, &c.; that the cause on the intervening petition be referred to a commissioner to ascertain and report what assets of the New Albany Company are covered by liens and what assets are not so covered, the amounts and descriptions thereof, and that, among other things, the master be directed to ascertain what portion of the capital stock has not been paid for and amount due thereon, to ascertain the name of the creditors, debts, &c., and what net earnings had accrued and shall hereafter accrue, &c., and that the amount thereof be adjudged and decreed to be a fund to be distributed among the general and unsecured creditors of the company, &c., and such other and further

proceedings be had for the sale of the assets, &c., according to law, &c., that the defendants to this intervening petition to wit, Mills, Jr., the trustee, and the New Albany Company, be required to appear and plead and make answer to the allegations recited in the intervening petition.

6. That, March 9, 1897, appellant moved the court upon the foregoing petition to vacate the decree of foreclosure and sale theretofore entered January 23, 1897, which motion was refused. (Transcript, 198.)

7. That as to all other matters and things contained in said petition the same remain and are now pending in said court for hearing and disposition.

Upon the foregoing statement, and as the same appears in said record, appellees move this court to dismiss the appeal upon the following grounds:

I.

The decree is not final as to appellant.

II.

Appellant is not a party to the decree of foreclosure and sale appealed from.

III.

The decree of foreclosure and sale adjudicated nothing against appellant, and its rights are all reserved for hearing and its interests fully protected by said decree.

IV.

As a floating creditor appellant has no standing in the foreclosure proceeding to challenge or attack the mortgages, and if it had, it can only maintain the same upon its intervening petition now pending in said court for hearing and disposition.

G. W. Kretzinger,
E. C. Field,
A. H. Joline,
Floyd A. Woods,
For Appellees.

And afterwards, on the same day, to wit, on the twelfth day of October, 1897, in the October term last aforesaid, in the record of proceedings thereof, in said entitled cause appears the following entry, to wit:

Tuesday, October 12, 1897.

Before: Hon. James G. Jenkins, Circuit Judge;
Hon. John W. Showalter, Circuit Judge.

The Louisville Trust Company

420 vs.

The Louisville, New Albany & Chicago Railway Company, *et al.*

And now comes the Louisville, New Albany & Chicago Railway Company, by Mr. G. W. Kretzinger and Mr. E. C. Field, its solicitors, and the Farmers Loan and Trust Company and John H. Baker, The Central Trust Company of New York, John H. Stotsenberg and James Murdock as trustees, by Floyd A. Woods, their solicitor, and Frederic P. Olcott, Henry W. Poor, and Henry C. Rouse, by Adrian H. Joline, their solicitor, and move the court to dismiss the appeal; and the court, not now being sufficiently advised, takes this matter under consideration.

And afterwards, to wit, on the twenty-third day of October, 1897, in the October term last aforesaid, in the record of proceedings thereof in said entitled cause, appears the following entry:

Saturday, October 23, 1897.

Before: Hon. William A. Woods, Circuit Judge;
Hon. James G. Jenkins, Circuit Judge;
Hon. John W. Showalter, Circuit Judge.

The Louisville Trust Company

420. vs.

The Louisville, New Albany & Chicago Railway Company, *et al.*

It is ordered by this court that this cause be, and the same is hereby re-set down for hearing November 15, 1897.

And afterwards, to wit, on the fourth day of November, 1897, in the October term last aforesaid, in the record of proceedings thereof, in said entitled cause appears the following entry, to wit:

Thursday, November 4, 1897.

Court met pursuant to adjournment.

Present : Hon. William Woods, Circuit Judge ;
Hon. James G. Jenkins, Circuit Judge.

It is ordered by the Court that Romanzo Bunn, Judge of the District Court of the United States for the Western District of Wisconsin, be designated and assigned to sit as a member of this court during the present session. Thereupon said Bunn appeared and took his seat as a member of said court.

And afterwards, to wit, on the sixteenth day of November, 1897, in the October term last aforesaid, in the record of proceedings thereof, in said entitled cause appears the following entry, to wit :

Tuesday, November 16, 1897.

Court met pursuant to adjournment.

Before : Hon. James G. Jenkins, Circuit Judge ;
Hon. John W. Showalter, Circuit Judge ;
Hon. Romanzo Bunn, District Judge.

The Louisville Trust Company,

420. vs.

The Louisville, New Albany & Chicago Railway Company, *et al.*

Now this day came the parties by their counsel, and this cause now comes on to be heard on the printed record and briefs of counsel and on oral argument by Mr. St. John Boyle and Mr. Swagar Sherley, counsel for appellant, and by Mr. Adrian H. Joline, counsel for appellees ; and the Court, having heard the same, takes this matter under advisement.

And afterwards, to wit, on the fifth day of February, 1898, in the October term last aforesaid, there was filed in the Clerk's office of said Court the opinion of the Court in said cause, which said opinion was in the words and figures following, to wit :

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SEVENTH CIRCUIT.

October Term, 1897.

The Louisville Trust Company, . . *Appellant*,

No. 420. *versus*

The Louisville, New Albany & Chicago Railway Company, John T. Mills, Jr., The Farmers' Loan and Trust Company, and John H. Barker, Trustees; The Central Trust Company of New York and John H. Stotsenburg and James Murdock, Trustees; Fred. P. Olcott, Henry W. Poor, and Henry C. Rouse.

Appeal from the Circuit Court of the United States for the District of Indiana.

Before JENKINS, and SHOWALTER, *Circuit Judges*, and BUNN, *District Judge* :

On August 24, 1896, John T. Mills, Jr., filed a judgment creditors' bill in the Circuit Court of the United States for the District of Indiana against the Louisville, New Albany and Chicago Railway Company, and procured the appointment of a receiver, who took possession of the property. On November 12, 1896, the Farmers' Loan and Trust Company and John H. Barker, trustees, filed their bill of complaint to foreclose a mortgage upon the property of the railway company, known as the Consolidated Mortage, securing $4,700,000 of six per cent. consolidated bonds. The foreclosure was based upon an allegation that default was made in the payment of the interest upon the bonds secured by said mortgage maturing on October 1, 1896. On the same day the Central Trust Company of New York and John H. Stotsenburg, trustees, filed their bill of foreclosure against the railway company to foreclose the mortgage known as the general mortgage, securing an issue of $2,800,000 five per cent. General Mortgage bonds. This foreclosure was based upon an allegation of default in the

payment of interest on the said bonds maturing November 1, 1896. On November 12, 1896, the two foreclosure bills were, by order of the Court, consolidated with the creditors' bill in one cause, to proceed under the title of the Farmers' Loan and Trust Company of New York and John H. Barker, complainants, against Louisville, New Albany and Chicago Railway Company. On December 14, 1896, the Central Trust Company of New York and James Murdock, trustees, filed their bill of foreclosure against the railway company to foreclose the mortgage known as the Equipment Mortgage, securing bonds whereof $709,000 of principal were alleged to be outstanding; the said Equipment Mortgage being a first lien upon a large amount of equipment, and a subordinate lien upon the property of the railway company covered by its other mortgages. The foreclosure was based upon allegations of default in the payment of the interest maturing on December 1, 1896. On December 21, 1896, the last mentioned suit was consolidated with the other consolidated suit under the same title. On December 24, 1896, the Farmers' Loan and Trust Company and John H. Barker, as trustees, filed an amended and supplemental bill, which related to the property of the Orleans, West Baden and French Lick Springs Railway Company, and the Bedford and Bloomfield Railroad Company, which last-mentioned companies had conveyed their properties by way of mortgage to the said trustees as additional security for the Consolidated Bonds. On January 13, 1897, the Orleans, West Baden and French Lick Springs, and Bedford and Bloomfield Companies were made parties defendant to the bill of the Farmers' Loan and Trust Company and John H. Barker. The defendant railway corporations filed an answer to the several bills of foreclosure, which did not put in issue any of the material allegations of said bills. The Central Trust Company, Stotsenburg and Murdock, trustees, filed an answer to the bill of the Farmers' Loan and Trust Company and Barker, admitting the allegations of the bill and amended and supplemental bill of those complainants. On January 23, the pleadings of all the parties defendant to the original bills being upon file, and there being no material allegation of any of the foreclosure bills in issue or denied, and no proofs being necessary in order to render a decree upon the foreclosure bills, application was made to the court for a decree of foreclosure and sale.

On the same day the Louisville Trust Company filed an intervening petition. This petition merely alleged the incorporation of the Louisville Trust Company, the fact that it was the holder of 125 bonds of $1,000 each, made by a corporation known as the Richmond, Nicholasville, Irvine and Beattyville Railroad Company, and alleged to have been guaranteed by the Louisville, New Albany and Chicago Railway Company, which remained unpaid and the interest

upon which was in default; that the Louisville, New Albany and Chicago Railway Company was authorized to make the guaranty, and that its right and power to do so had been adjudged in a suit in the Circuit Court of the United States for the District of Kentucky; that the Louisville, New Albany and Chicago Railway Company was indebted to the petitioner in $125,000 and interest; and it prayed that the petition might be filed, and an order entered authorizing petitioner to appear in its own behalf, and in behalf of all others holding similar claims, and take such steps and proceedings as it might be advised by counsel. This intervening petition did not contain allegations tending to controvert any matters contained in the foreclosure bills, and tendered no issue whatever. Upon said petition an order was made that the Louisville Trust Company and the Kentucky National Bank be admitted to appear in the proceedings in the cause, each on its own behalf. No answer or other pleading of any kind was tendered to the court or was ever suggested. On the same day the court made and entered the decree of foreclosure and sale. The decree directed foreclosure of the several mortgages, but reserved full power to adjudge with respect to the income of the receivership and the rights of creditors in and to the same. On February 27, 1897, more than a month after the decree was entered, the appellant filed another petition. In this petition various charges and allegations were made tending to negative the right of the trustee to foreclose their mortgages, and the prayer of the petition was to the effect that the decree of foreclosure and sale should be set aside; that the consolidations by which the mortgagor company was created should be adjudged to be void; that its mortgages should be declared to be invalid; that the assets and liabilities of the railway company should be ascertained, and that the amount of such assets should be delared to be a fund to be distributed among general and unsecured creditors; and, further, that an order be entered commanding some of the parties to the consolidated cause, but not all, to appear within a time to be fixed by the order of the court, and to plead or make answer to the allegations of the petition. No such order was ever made or applied for. But on March 9, 1897, the day before the day fixed for the sale under the decree, it appears that the petition of February 27, 1897, came on to be heard, and was argued by counsel, and that the court refused to vacate the decree of foreclosure and sale, or to postpone or adjourn the sale. The sale was duly made to F. P. Olcott, Henry W. Poor and Henry C. Rouse, as a committee for the bondholders. On the day of the sale, viz., March 10, 1897, application was made to confirm the sale and the master's report, and, all the parties to the foreclosure bills appearing and consenting, an order of confirmation was entered. The Louisville Trust Company on

May 1, 1897, filed its petition of appeal and assignment of errors, and said petition was allowed. The appeal is taken from the decree of foreclosure and sale, and from the order denying the application to set the same aside.

BUNN, *District Judge*, after stating the fact as above, delivered the opinion of the Court.

There are several reasons why the decree in this case should not be disturbed.

1. The intervening petitioner, who is the appellant here, had no standing in the court below. At best it was only a general creditor of the defendant company, having and claiming to have no interest in or lien upon the real estate and franchises of the company which formed the subject of the foreclosure suits. The petitioner claims to be the owner and holder of certain bonds issued by the Richmond, Nicholasville, Irvine and Beattyville Railroad Company, the payment of which was guaranteed by the defendant, the Louisville, New Albany and Chicago Railway Company, which bonds remain unpaid. It is well settled that in a foreclosure proceeding like this, unsecured creditors having no judgment or other lien upon the real estate, can not be made defendants. They are neither necessary nor proper parties. *Bronson* v. *Railroad Company*, 2 Black, 524; *Stout* v. *Lye*, 103 U. S. 66; *Herring* v. *Railroad Company*, 105 N. Y. 340; *Jones* v. *Winans*, 20 N. J. Eq. 96. In the case of *Bronson* v. *R. R. Co. supra*, it is said: "But was it ever seriously maintained that a general creditor, having no specific lien, had a right to interfere in the contests between his debtor and third parties? * * * If the right was conceded to one creditor it would have to be to another, and where the creditors are numerous, as in the case of railroad bondholders, the exercise of the right would lead to great embarrassment."

In the New Jersey case cited a general creditor had presented a petition, asking to be made a party defendant in a foreclosure case, and the Chancellor said: "The petitioner has no judgment or other lien on the land; he is in the position in which any creditor at large of Winan stands. No such creditor is a necessary party to a bill to foreclose; nor could he be properly made a defendant. There is no authority or precedent for such an order as is asked for in this case, and it is against the settled principles on which the practice of the court is founded."

In the case at bar, no doubt, the Circuit Court exercised a discretion in allowing the appellant to come in, in order that it might be in condition to keep an eye on the proceedings and to be ready to protect its interests in any surplus that might remain after the

bondholders and other secured creditors were paid. The petitioner, after being allowed to file its petition, did not tender any issue nor ask leave to file any answer or pleading, so that there was no occasion for the complainants to offer any evidence to substantiate the allegations of the bill, but a decree of foreclosure was regularly and properly rendered upon the bill and answers. Now the appellant comes to this court and asks for all the benefit and advantage that it might have had if it had asked and obtained leave to put in an answer, and had produced evidence to defeat the equities of the bill. We know of no precedent for such a practice ; it would be a travesty upon equity proceedings. The case stands here as though the equities of complainant's bill had been established by competent and sufficient evidence in the court below.

The appellant's original petition alleged nothing whatever against the foreclosure of the validity of the mortgages, or the equities of the complainant's case, but merely set up facts which would entitle the petitioner to share in any surplus or assets not covered by the mortgages. It was filed on the same day that the decree was entered. The complainants were not notified that there was any dispute as to the merits of the foreclosure. What should the complainants do? Must they delay the foreclosure and coax the petitioner to put in an answer disputing their right to the relief sought? There was nothing secret about the foreclosure proceedings. They had been pending for some time and the case was ripe for a decree, which was regularly entered upon bill and answer.

2. The sole ground of objection to the complainant's case in the Court below as set forth in the petition of appellant, and which was filed after a decree was taken, and which was addressed to the discretion of the Court asking to have the decree set aside, was the total invalidity of the various bonds and mortgages because the defendant corporation which is a consolidated company was never regularly consolidated, and that under the law of Illinois and the decision of the Supreme Court in the case of *American Loan and Trust Co.* vs. *Minnesota Co.*, 157 Ill. 741 (47 N. E. Rep. 153), a railway corporation of Illinois could not be consolidated with a railway corporation of another state.

In answer to this claim it is alleged on the part of the appellees that there was no property of the defendant company in Illinois except some leasehold interests, and that an examination of the case in the Illinois Supreme Court shows that it has no application to such a case as this ; and that it is well settled law that in an action to foreclose a mortgage securing bonds of a consolidated corporation of two different states, where from the time of consolidation it exercised the franchises of a consolidated corporation without objection from the state or the stockholders who appeared and voted as

its stockholders at its annual meetings, it is a de facto corporation, and both such de facto corporation and its stockholders and creditors who claim to be general creditors of the same de facto corporation, are estopped to assert its unauthorized existence as a corporation to avoid the bonds ; which no doubt furnishes a complete answer to the contention, provided it were essential to meet that contention here on the merits as though it had been litigated and passed upon in the court below, and an appeal taken from the decision.

The case of *Farmers' Loan and Trust Co.* v. *Toledo*, 67 Fed. Rep., is directly in point upon this question. See also *Dallas County* v. *Huidekoper*, 154 U. S. 654. Both the appellants and appellees have dealt with this defendant corporation as though it had a legal existence. One who deals with a corporation as existing in fact is estopped to deny, as against the corporation that it has been legally organized. *Close* v. *Glenwood Cemetery*, 107 U. S. 466. In the recent case of *Continental Trust Company* v. *Toledo, St. L. & K. C. R. Co.*, 82 Fed. Rep. 642, a similar question was presented and the petitioner's right to allege the invalidity of bonds denied. In that case, which like this was one of several bills consolidated, the parties were allowed to come in and defend, on the ground that some of the cases consolidated were not foreclosure cases but suits brought by unsecured creditors in the nature of creditors' bills, it being conceded that in a foreclosure bill a general creditor could not contest the validity or the amount of the mortgage lien. The bondholders, however, had made themselves parties to the creditor's bill by a committee, and had set up their claims and liens, and on this ground the creditors were allowed to attack the validity of the bonds secured by mortgage. But the court, when it came to the question of the creditors alleging the invalidity of the bonds on the general ground that the corporation had no valid existence, distinctly denied such right. On that question, Taft, Circuit Judge, in his opinion says : "Let us consider first the averment that the Toledo, St. Louis & Kansas City Railroad Company is neither a corporation de jure nor a corporation de facto.

"Can such a defense be urged by one purporting to be a creditor of the pretended corporation? If the bonds are null and void because the corporation issuing them was a nullity, clearly the debts of the petitioners and the complainant are in no better condition, and the Court has nothing upon which to exercise its jurisdiction. * * * So long as they (the petitioners) owe their right to be in court at all to the sufficiency of the averments of the bill for the relief asked, they can not be heard to question the very basis upon which alone the court can act. If it is true that the defendant in the bill is not an entity at all, but only an empty name and nullity, the bill must fail for want of a defendant, and with it must fall all the peti-

tions herein. * * * It hardly seems necessary to point out that a defense urged by one creditor against the claim of another, which must defeat, not only that at which it is aimed, but also that of the complainant and all other claims, and which denies the existence of the defendant against whom the action was brought, can not be permitted to an intervenor."

These remarks are peculiarly applicable to the case at bar, where the appellant occupies the anomalous attitude of denying the capacity of the defendant corporation to issue its own bonds to secure its own indebtedness and to enable it to carry on its own business, while claiming that it had power to guarantee the bonds of another Railroad Company. Such a contention can not be allowed. There is a motion in the case to dismiss the appeal which need not be considered.

The decree of the Circuit Court is affirmed.

And afterwards, on the same day, to wit: on the fifth day of February, 1898, in the October term last aforesaid, in the record of proceedings thereof, in the said entitled cause appears the following entry, to wit:

Saturday, February 5, 1898.

Before: Hon. James G. Jenkins, Circuit Judge;
Hon. John B. Showalter, Circuit Judge;
Hon. Romanzo Bunn, District Judge.

The Louisville Trust Company,

420 vs.

The Louisville, New Albany & Chicago Railway Company, *et al.*

Appeal from the Circuit Court of the United States for the District of Indiana.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Indiana and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered, adjudged, and decreed, by this court, that the decree of the said Circuit Court, in this cause be, and the same is, hereby affirmed with costs.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SEVENTH CIRCUIT.

I, Oliver T. Morton, Clerk of the United States Circuit Court of Appeals, for the Seventh Circuit, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 229 inclusive, contain a true copy of the transcript of the record and proceedings in the United States Circuit Court of Appeals for the 7th Circuit in the case of

Louisville Trust Company,

vs.

Louisville, New Albany & Chicago Railway Company, *et al.*

No. 420, October Term, 1896, as the same remains upon the files and records of said United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, for the Seventh Circuit, at the City of Chicago, this 21st day of February, A. D. 1898.

(Signed) Oliver T. Morton,
Clerk of the United States Circuit Court of Appeals
for the Seventh Circuit.

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the seventh circuit, Greeting:

Being informed that there is now pending before you a suit in which The Louisville Trust Company is appellant and The Louisville, New Albany & Chicago Railway Company *et al.* are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the district of Indiana, and we being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of April, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States. No. 613, October term, 1897. The Louisville Trust Company *vs.* The Louisville, New Albany & Chicago R'y Co. *et al.* Writ of certiorari. Filed Sep. 6, 1898. Oliver T. Morton, clerk.

UNITED STATES OF AMERICA, *Seventh Circuit,* } ss:

In obedience to the command of the foregoing writ of certiorari and in pursuance of the stipulation of the parties, a full and true copy of which is hereto attached, I do hereby certify and return that the transcript of the record filed with the application to the Supreme Court of the United States for a writ of certiorari in the case of The Louisville Trust Company, appellant, *vs.* The Louisville, New Albany & Chicago Railway Company *et al.*, appellees, is a full, true, and complete transcript of the record upon which said cause was heard in the United States circuit court of appeals, together with all proceedings in said court.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, Illinois, this sixth day of September, A. D. 1898.

OLIVER T. MORTON,
Clerk United States Circuit Court of Appeals for the Seventh Circuit.

Supreme Court of the United States, October Term, 1897.

LOUISVILLE TRUST COMPANY
vs.
THE LOUISVILLE, NEW ALBANY & CHICAGO Railway Co., &c.

No. 613. Stipulation.

Whereas the Supreme Court of the United States has in the above-entitled cause, upon the petition of the Louisville Trust Company, awarded a writ of certiorari addressed to the honorable the judges of the United States circuit court of appeals for the seventh circuit, commanding them to send to the said Supreme Court the record and proceedings in the said cause:

Now, it is agreed between the parties that the certified copy of the transcript now on file in the office of the clerk of the United States Supreme Court, No. 613, may be taken as a return to the writ, and that the clerk of the said court of appeals may certify this stipulation as a return to the said writ.

ADRIAN H. JOLIME,
Of Counsel for Certain Def'ts.
G. W. KRETZINGER,
E. C. FIELD,
ST. JOHN BOYLE, *For App't.*

Endorsed: United States Supreme Court, October term, 1897. No. 613. Louisville Trust Co. *vs.* Louisville, New Albany & Chicago Railway Co. *et al.* Stipulation. Filed Sep. 6, 1898. Oliver T. Morton, clerk.

[Endorsed:] Case No. 16,826. Supreme Court U. S., October term, 1898. Term No., 263. The Louisville Trust Co., petitioner, *vs.* The Louisville, New Albany & Chicago Railway Co. *et al.* Writ of certiorari and return. Office Supreme Court U. S. Filed Sep. 8, 1898. James H. McKenney, clerk.

11120